

(22,321.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 700.

C. R. SHARPE ET AL., APPELLANTS,

vs.

E. W. BONHAM ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE MIDDLE DISTRICT OF TENNESSEE.

INDEX.

	Original.	Print
Caption.....	1	1
Original bill .....	1	1
Exhibit A—Documentary evidence.....	24	16
(1) Compact of 1810.....	24	16
(2) Circular letter of 1810.....	25	17
(3) Adoption of Confession of Faith by the synod of 1814.....	26	18
(4) Change in form of government made by the general assembly of 1829.....	26	18
(5) Report of the committees which prepared the Confession of Faith and form of government of 1883.....	26	18
(6) Adoption and submission of the Confession of Faith and constitution of 1883.....	28	19
(7) Sending down of the revision of 1883.....	28	20
(8) Attempts at union.....	29	20
(9) Minutes of the general assembly of the Cum- berland Presbyterian Church for the year 1903.....	47	35

Exhibit A (*Continued*)—

(10) Minutes of the general assembly of the Cumberland Presbyterian Church for the year 1904 .....	50	37
(11) Minutes of the general assembly of the Cumberland Presbyterian Church for the year 1905.....	64	51
(12) Minutes of the general assembly of the Cumberland Presbyterian Church for the year 1906.....	81	69
(13) Constitution of the Cumberland Presbyterian Church.....	85	73
(14) Confession of Faith of the Cumberland Presbyterian Church.....	90	77
Index to documents.....	95	31
Memorandum as to Exhibit B.....	99	85
Exhibit C—Deed to property involved .....	99	85
Order allowing amendment to bill.....	100	86
Amendment to bill.....	100	86
Motion for preliminary injunction.....	102	88
Order denying restraining order.....	102	88
Order fixing hearing on motion for injunction.....	102	88
Order making new parties.....	104	89
Order of dismissal as to W. R. Register <i>et ux.</i> .....	104	89
Plea to jurisdiction.....	105	89
Stipulation as to Exhibit A.....	109	93
Exhibit B—Decree of supreme court of Tennessee in Landrith <i>vs.</i> Hudgins. ....	110	93
C—Bill in Landrith <i>vs.</i> Hudgins.....	113	96
D—Answer in Landrith <i>vs.</i> Hudgins.....	136	115
Opinion of Sanford, J.....	163	138
Declination of complainants to plead further.....	165	139
Order denying injunction and sustaining plea.....	166	139
Decree.....	166	140
Judge's certificate as to question of jurisdiction .....	166	140
Petition for appeal.....	167	141
Allowance of appeal.....	167	141
Assignment of errors.....	167	141
Order allowing appeal but denying injunction.....	168	142
Bond on appeal.....	168	142
Citation (copy).....	169	143
Clerk's certificate.....	170	143



1 At a regular term of the Circuit Court of the United States for the Middle District of Tennessee, begun and holden at the Custom House at Nashville, Tennessee, upon the Second Monday of April, 1909, and at subsequent terms thereof, present and presiding the Hon. Edward T. Sanford, Judge etc., the following proceedings were had, to-wit:

Upon April 14, during said term, a bill was filed as follows, viz:

The Circuit Court of the United States in and for the Middle District of Tennessee.

C. R. SHARP, BELLE MONROE, MARGARET McDONALD, and W. W. McDONALD, Complainants,

vs.

E. W. BONHAM, JOHN M. SMITH, J. H. BARBEE, J. N. HOBBS, JOHN B. Robertson, Thomas H. Allen, T. S. Harbison, Ben E. White, Isaac T. Rhea, John M. Gaut, W. T. Hardison and Hardy Copeland, Defendants, and All the Members of Grace Cumberland Presbyterian Church, of Nashville, Tenn.

To the Honorable the Judges of the Circuit Court of the United States in and for the Middle District of Tennessee:

C. R. Sharp, who is a citizen of the State of Mississippi, and Belle Monroe, who is a citizen of the State of Kentucky, and Margaret McDonald and her husband, W. W. McDonald, who are citizens of the State of Louisiana, bring this their bill against E. W. Bonham, John M. Smith, J. H. Barbee, J. N. Hobbs, John B. Robertson, Thomas H. Allen, T. S. Harbison, Ben E. White, Isaac T. Rhea, John M. Gaut, W. T. Hardison and Hardy Copeland, all of whom are citizens of the State of Tennessee, residing in said District.

And thereupon your orators complain and say:

2 That Complainants are members in good and regular standing in a religious society in the city of Nashville and the State of Tennessee known as Grace Church, said society having a house of worship, located on lot, hereinafter described, on the southeast corner of Second Avenue (formerly Market Street) and Lindsley Avenue, in said city. Said house and lot are worth about twenty thousand dollars. Defendants I. T. Rhea, John M. Gaut and W. T. Hardison are the Trustees to whom the legal title to said lot was conveyed some fifteen years ago by a deed, which is hereto annexed marked Exhibit "C" and made a part of this bill, but none of the Exhibit to this bill need be copied. Defendant Hardy Copeland is the Pastor, and the other Defendants, except Defendants Rhea, Gaut and Hardison, claim to be Elders, in another religious society in said city, calling itself Grace Cumberland Presbyterian Church, and occupying another house of worship near to Grace Church. Nat F. Dortch, one of the Trustees named in said

deed, is dead, and the vacancy created by this death has never been filled.

Religious services have for many years been regularly conducted in said Grace Church by a pastor employed by the sessions thereof and complainants as members of said church or congregation, had and have the right to attend said services and to have them conducted by said pastor under the control of said session.

Complainants would further state that said congregation prior to 1904, was a congregation in the religious denomination known as the Cumberland Presbyterian Church, under the care and control of Lebanon Presbytery of said denomination, and said Presbytery was under the care and control of the Synod of Tennessee of said denomination and said Synod was under the care and control of the General Assembly of said Cumberland Presbyterian Church. Said denomination had a Presbyterian form of government which, under its constitution as under all of the Presbyterian constitutions, consists of a regular gradation of judicatories called courts, but having legislative, judicial and executive powers, and possessing all the governmental powers belonging to the denomination. Said courts consist of the session, having control and jurisdiction over a single congregation; the presbytery, over the churches within a certain district; the synod, over a district composed of several presbyteries, and the General Assembly over the entire denomination, it being the highest court of the church and representing in one body all the particular churches thereof. The powers of these courts and their relation to each other and to the members and officers of the church and to the church property are more particularly set forth in the exhibits made part of this bill. Prior to 1903 the great body of the ministers and members of the Cumberland Presbyterian Church insisted that the Westminster Confession of Faith, which was the creed of the Presbyterian Church in the United States of America, was fatalistic in its teachings as to the Decrees of God and the doctrine of foreordination or predestination, this alleged difference in doctrine having been the cause, in 1810, of the separation from said Presbyterian Church of three ministers, who, in that year, organized the Cumberland Presbyterian Church. This difference in doctrine was the sole cause which separated, and perpetuated the separate organic existence of the two churches, notwithstanding repeated efforts to reunite and although for many years the ministry and membership of the Presbyterian Church have denied that their creed, properly construed, was fatalistic, yet that church had never prior to 1903, made any authoritative declaration or interpretation to that effect. About the year 1900 it took steps which culminated in 1903 in the insertion of two new chapters in its Confession of Faith and in the adoption of a Declaratory Statement, which qualified and limited the statements which were objectionable to Cumberland Presbyterians. Said new chapters and said Declaratory Statement, taken together, is a new declaration of the church's faith on the doctrines in question and this declaration is non-fatalistic in its character

4 and has the effect of nullifying any and everything of a fatalistic character contained in any of the prior doctrinal standards of that church. The doctrinal difference between the two churches having in this way been eliminated steps were taken for the reunion of the two. A full statement of the steps taken to form the union is hereinafter contained.

From the time when said union went into effect on the 24th day of May, 1906, the session of Grace Church recognized the reunited church, sent representatives to the Lebanon Presbytery and Tennessee Synod, which recognized the union, the pre-bytery sending representatives to the union General Assembly. There were several elders who did not approve of the union, but they did not renounce it, but on the contrary, continued in the session and acted with it until the separation herein referred to, on the 13th of January, 1907. On the 24th day of May, 1906, the congregation consisted of some three hundred members or more. Although there were a few other members of the church who did not approve of the union, yet they also continued to attend the services as before the union and recognized the union session and union pastor. On the 13th day of January, 1907, a separate organization of the opponents of the union took place, in which 26 or 27 persons, men, women and children, participated.

The leaders and managers of this meeting assumed that every elder and deacon who had recognized the union had vacated his office and the meeting proceeded to elect elders and deacons. In like manner the managers assumed the pastorate to be vacant. Having demanded the possession of the church property and such demand not having been acceded to they rented the Westminster Church near by and began services therein.

The union pastor and session and congregation continued their regular services in the church, repaired it, recarpeted it, put in it a new pipe organ at the cost of over two thousand dollars, and the same services have been maintained up to the present time,  
5 the congregation in every way recognizing the union and discharging all its functions as a congregation in the united church.

In order that the court may more perfectly understand the rights of the parties hereto, complainants will now state more fully the origin of the Cumberland Presbyterian Church, the steps taken to form said union and facts collaterally connected with these events.

## II.

Complainants would show unto your honor that in the latter part of the eighteenth century, and beginning of the nineteenth century, a part of the territory now comprising Middle Tennessee and Kentucky was called the Cumberland country. In the beginning of the nineteenth century there developed in this Cumberland country an extraordinary religious awakening which was afterwards known as the revival of 1800. This revival was originated and promoted largely through Christian activity of a large number of ministers and laymen of the Presbyterian Church, who were afterwards known

as the "Revival party." The revival movement, and especially its methods, was opposed by some of the most conservative Presbyterian ministers and laymen of the Cumberland country. They soon became known as the "Anti-Revival party." There were not enough ministers in that section of country to efficiently carry on the revival work, and the emergency did not allow time to educate new ministers according to the Presbyterian standard of education. Devout laymen, in some instances, undertook under these peculiar circumstances, to explain and enforce the teachings of the Gospel, and their efforts proving successful, Cumberland Presbytery of the Presbyterian Church ordained them to the full work of the ministry.

These young men in their evangelistic work naturally made prominent and emphatic the free agency of the individual in accepting the plan of salvation. In this way their attention was especially challenged to the teachings of the Westminster Confession of Faith as to the doctrines of election, foreordination, the eternal decrees and the correlated doctrines. These teachings were expressed in such language as to be capable of a construction that involved doctrines of fatality. The ordination vows of the Church required candidates for ordination to declare that they received and adopted the confession of faith as containing the system of doctrines taught in the Holy Scriptures. These young men claimed the right to make this declaration with the explanation that they did not understand the Confession of Faith as teaching the doctrine of fatality, and if it did so teach, they accepted the confession with that doctrine excepted. The Anti-Revivalists objected to this qualified declaration. They appealed to the Synod, and the Synod undertook to revoke the ordinations. The Presbytery denied the constitutional right of the Synod to make the revocation and ultimately the Synod dissolved the Presbytery. The controversy continued until the Revivalist party became satisfied that they could not, without the sacrifice of principle, remain longer in the Presbyterian Church. Accordingly, on the fourth day of February, 1810, at the residence of Samuel McAdow, a log cabin in Dickson County, Tenn., three ministers—Finis Ewing, Samuel King and Samuel McAdow—organized an independent Presbytery, calling it Cumberland Presbytery, and this was the beginning of the Cumberland Presbyterian Church.

Its founders hoped and expected that the Presbytery thus formed would, in a short time thereafter, become reunited with the Presbyterian Church. They deprecated separate denominational existence, avoided it as long as possible, took the step with great reluctance, and fondly cherished the hope that the separation would be of short duration. They expressly adopted the Westminster Confession of Faith and the Presbyterian Constitution and other doctrinal and ecclesiastical standards. There is hereto annexed a printed pamphlet, entitled "Documentary Evidence" marked Exhibit A and made part of this Bill but which need not be copied. Its contents consist of true copies of the various documents and records which it purports to set forth and correctly states all facts therein stated. The various documents contained in it will be re-

ferred to in this bill as D. E. No. 1, 2, etc. This instrument, by the execution of which the church was organized in 1810, is found in D. E. and is document No. 1 p. 1. It provides that all candidates for licensure and ordination should adopt the confession "except the doctrine of fatality." The Presbytery grew until it was divided into three Presbyteries, and these Presbyteries were in 1813 organized into a Synod called Cumberland Synod. The Synod in 1829 was divided into three Synods and organized into a General Assembly. From 1810 to 1813 Cumberland Presbytery was the highest judicatory of the church, and from 1813 to 1829 Cumberland Synod was its highest judicatory.

### III.

The best informed and most efficient members of the church, from its organization down to 1903, were convinced that the cause of Christianity would be promoted by the union of all the branches of the Presbyterian family in the United States. The highest judicatories of the church repeatedly participated in negotiations for an organic union with the other denominations, notably with the Presbyterian Church, North, and the Presbyterian Church, South, and invariably the difference in the creeds of the negotiating churches on the subject of predestination proved to be the one impediment in the way of the union. Each attempt at a union was abandoned with reluctance and regret. The Presbyterian Church in the United States of America (the Presbyterian Church, North) took action which in 1903 resulted in a revision and construction of its Confession of Faith and removed all grounds for the contention that it contained doctrines of fatality. The great bulk of the ministry and membership of the Cumberland Presbyterian Church realized that no reason longer existed why the long desired union between these two churches should not take place, and the General Assemblies of the two churches, which convened in 1903, each appointed a committee to confer with each other on the subject of organic union. The action of the Cumberland Presbyterian Assembly is set forth in D. E. pages 24 to 27, Nos. 36 to 39.

The Cumberland Presbyterian General Assembly of 1903 exercised the highest degree of deliberation and caution in taking the step which it took. Its moderator retired from the chair, presented a preamble and resolution providing for the appointment of a committee on "Presbyterian Comity, Federation and Union \* \* \* who shall do all in their power to promote the closer federation or organic union of all the branches of the Presbyterian family, and shall consider carefully any proposition that may come before it on this subject." Said paper was referred to the Assembly's Committee on Overtures, consisting of six ministers and eight elders. This committee unanimously reported in favor of the adoption of a resolution appointing a committee of nine, afterwards increased to eleven, to confer with such like committee as might be appointed by other Presbyterian bodies in regard "to the desirability and practicability of closer affiliation and organic union among the members

of the Presbyterian family in the United States." The report of the committee is found in D. E. pages 24 and 25, No. 36. Very unusual and very precautionary methods were adopted for the selection of this committee in order that it might be truly representative in its character. The General Assembly elected as chairman of the committee Rev. W. H. Black, D. D., president of Missouri Valley College, a man of superior ability, scholarship and integrity. The Synods of the Church were divided into four groups, as nearly equal in commissioners as possible, and each group, through its commissioners separately assembled, was authorized to elect one minister and one ruling elder as members of the committee. The paper so providing for the selection of the committee is found in D. E. p. 25, No. 37. To the eight thus chosen three more were added to the Assembly itself from the Church at large, making with the chairman twelve of the Church's ablest and most trusted ministers and elders, three of them being lawyers of ability.

9 The members of the committee selected by groups of commissioners as above stated were as follows:

Chosen by the commissioners from the Synods of Alabama, Mississippi and Tennessee: Rev. Ira Landrith, of Nashville, Tenn., and Elder E. E. Beard, of Lebanon, Tenn.

Chosen by the commissioners from Texas and Indianola Synods: The Rev. S. M. Templeton, Clarksville, Texas, and Elder M. B. Templeton, of Waxahachie, Texas.

Chosen by the commissioners from the Synods of Arkansas, Kentucky and Missouri: The Rev. B. P. Fullerton, D. D., St. Louis, Mo., and Judge W. E. Settle, of Frankfort, Ky.

Chosen by the commissioners from the Synods of Illinois, Indiana, Iowa, Kansas, Ohio, Oregon, Pacific and Pennsylvania: The Rev. D. E. Bushnell, D. D., Alton, Ill., and Pres. A. E. Turner, of Waynesburg, Pa. See D. E. p. 26, No. 39.

The General Assembly of the Presbyterian Church in the United States of America, which convened in 1903, appointed a similar committee and the two committees met in the city of St. Louis, Mo., and devoted four days and nights to the consideration of the important questions submitted to them.

They appointed subcommittees, which met two months later in the city of Cincinnati, for the arrangement of details, and these committees remained in session three days. The final result was that the two committees agreed upon a joint report to be submitted by the separate committees, each to its own General Assembly, recommending that a union between the two churches be consummated upon a basis set forth in the report. Said joint report is found in D. E. p. 30, No. 40.

#### IV.

This report, after elaborate argument, was adopted by the General Assembly and referred to the Presbyteries of the Church by the adoption of two resolutions offered by Rev. S. M. Templeton, which are found in D. E. p. 34, No. 41. The vote on said resolutions



was 162 in the affirmative and 74 in the negative. See D. E. p. 34, No. 42.

10 At the time said resolutions were adopted the General Assembly of the Presbyterian Church had not acted, and as it could not be absolutely known that it would adopt the report, the Cumberland Presbyterian Assembly directed its moderator and stated clerk to submit the basis of union contained in the report to the Presbyteries, upon receiving final notification that the Presbyterian Assembly had adopted the report.

In order that the Presbyteries of the Church might be fully informed in regard to the revised Confession of Faith referred to in the joint report, the revised portions were printed in the minutes of 1903 of the General Assembly of the Cumberland Presbyterian Church, a copy of which revisionary action is found in D. E. p. 34, No. 43. The unrevised portions, having for seventy-three years been part of the creed of the Cumberland Presbyterian Church, was already familiar to its members. A copy of said minutes was sent to every minister, candidate and licentiate in the denomination and to the clerk of every session, as well as to the stated clerk of every Presbytery and Synod. The Presbyterian General Assembly of 1904 also adopted, by a vote almost unanimous, said joint report and submitted the basis of union therein contained to its Presbyteries for their approval or disapproval. It also adopted and submitted to its Presbyteries for approval an amendment to the Constitution of that Church providing for the separation of the races in all of the church courts except the General Assembly. A copy of said constitutional amendment is found in D. E. p. 54, No. 49a. The moderator and stated clerk of the Cumberland Presbyterian General Assembly, pursuant to the orders of the Assembly, addressed to every Presbytery a communication submitting the basis of union to them for their action. A copy of said communication is found in D. E. p. 44, No. 46.

The question as to whether the basis of union should or should not be adopted by the Presbyteries was most exhaustively discussed for almost one entire year through the official organ of the

11 Cumberland Presbyterian Church published at Nashville, called the Cumberland Presbyterian, in which as much matter was published emanating from the opponents of the union as from the advocates of it, and in addition the opponents of the union established as their organ a weekly periodical called the Cumberland Banner, which was largely circulated, many thousands of copies being sent out gratuitously. Both the champions and opponents of the measure flooded the Church with circular literature, and the questions involved were discussed by the Presbyteries, Synods and from the pulpit and in private conversation. A more universal and exhaustive discussion of any measure is practically impossible. The Presbyteries made report to the General Assembly, through its stated clerk, by means of printed blanks furnished to them by him, copy of which is found in D. E. p. 41, No. 44a. The reports were received by the clerk and submitted to the General Assembly of 1905, and were referred to a special committee. The committee made a ma-

jority and minority report; both of them, however, concurred in finding that sixty Presbyteries had approved the basis of union and fifty-one had disapproved of it, two of the 114 Presbyteries taking no final action and one not reporting. Said majority report was adopted and its recommendations concurred in. A copy of the preamble and resolution, reported by the committee and adopted by the Assembly, is found in D. E. p. 42, No. 44*b*. By said resolution it was resolved by the Assembly that it "does hereby find and declare that a constitutional majority of the Presbyteries of the Cumberland Presbyterian Church have voted approval of the reunion and union of the said churches upon the basis set forth in said joint report, and does find and declare that said reunion and union has been constitutionally agreed to by the Cumberland Presbyterian Church, and that the basis of union has, for the purposes of the union, been constitutionally adopted.

12

## V.

The General Assembly of the two churches continued their respective committees on organic union, the Cumberland Presbyterian Assembly adding to its committee nine additional members, thereby increasing it to twenty-one. Eight of these new memberships were filled by persons who had up to this time opposed the union.

The Cumberland Presbyterian Committee, so enlarged and continued, was directed to confer with the various boards, committees, organizations and institutions of the Cumberland Presbyterian Church, "with reference to the adjusting of the details of union with the Presbyterian Church in the United States of America.

After two meetings the committee unanimously, excepting one Cumberland Presbyterian member, adopted a joint report. Each one of the two committees incorporated the joint report in a separate report to its Assembly. The Presbyterian Assembly convened on the 17th day of May, 1906, at Des Moines, Iowa, and the Cumberland Presbyterian Assembly convened on the same day in the city of Decatur, Ill.

## VI.

On the 16th day of May, 1906, an injunction bill was presented to the Hon. W. C. Johns, Judge of the Circuit Court of Macon County, Illinois, of which county Decatur is the county seat, seeking to enjoin the union committee of the Cumberland Presbyterian Church from presenting its report to the General Assembly and seeking to enjoin the Assembly from acting on such report. The defendants demurred to the bill. It was agreed between counsel that the report should not be presented or acted on, pending the application for injunction. The injunction was refused and the bill dismissed on the 23rd day of May, 1906, and from this action of the court the complainants appealed. Thereupon said committee presented its report and the same was acted on by the adoption of the following resolution:

13

"Resolved, That the foregoing report of the Committee on Fraternity and Union be accepted, and that the joint report on reunion and union contained in said report be adopted."



The vote upon said resolution was 165 in the affirmative and 91 in the negative. The Presbyterian Assembly at Des Moines was informed by telegram of this action, and that Assembly adopted said joint report and by telegram informed the Cumberland Presbyterian General Assembly of the fact and of the further fact that the Presbyterian Assembly had made the declaration provided for in Section 14 of the joint report. Thereupon the moderator of the Cumberland Presbyterian Assembly made the declaration that the basis of reunion was in full force and effect. A copy of said declaration is found in D. E. p. 60 No. 53. After the final calling of the roll, the Assembly adjourned by the adoption of the resolution found in D. E. p. 60 No. 54. Thereupon the moderator declared the Assembly adjourned *sine die* as a separate Assembly, to meet as part of the General Assembly of the reunited church on the third Thursday in May, 1907, at 11 o'clock a. m., at the place chosen or to be chosen by the Presbyterian Assembly.

The General Assembly of the Cumberland Presbyterian Church was invested by its constitution and Confession of Faith with legislative, executive and judicial authority; with power to decide all questions of law, doctrine or ecclesiastical polity coming before it as judicial cases or other controversies or propounded to it as abstract questions or arising in the exercise of its reviewing or superintending power over the whole Church. Copies of sections of the Constitution and Confession of Faith conferring such powers are found in D. E. 62, et seq.; 71 No. 65; and p. 67. The General Assembly of 1903, by the adoption of Report No. 1 of its Committee on Overtures, and by adopting the joint report of 1904 and by its action in 1905, and by adopting the joint report of 1906, clearly adjudged, impliedly and expressly, that the reunion had been constitutionally agreed to by the Cumberland Presbyterian Church, and that the basis of union had been constitutionally adopted. By adopting the joint reports of 1904 and 1906, it decided that there existed substantial identity between the two creeds, and this decision was concurred in by the Presbyteries of both churches and the Assembly of the Presbyterian Church. All the members of the Cumberland Presbyterian Church had impliedly and expressly promised when they became such members to abide by and support the rules and regulations of the Church and submit to its constituted authorities so long as they continued members. The express promise is found in section 21, subsection 4, of the Directory for Worship, copy of which is found in D. E. p. 69 No. 61. All members of the Church, both ministers and laymen, were therefore under legal and moral obligations to acquiesce in the action of the General Assembly and Presbyteries in entering into the union. A bill in equity was filed at Decatur, Ill., in May, 1906, a day before the Cumberland Presbyterian General Assembly convened at that place, by Joe H. Fussell, a citizen of Tennessee, and four other citizens of this State; A. N. Eshman and J. J. McClellan, of the State of Mississippi; Thompson Ashburn and two others of the State of Indiana, and fourteen citizens of the State of Illinois, all alleged to have been members of the Cumberland Presbyterian

Church. It was filed in their own behalf and in behalf of all other members of said Church who were opposed to the union, alleged to number more than 100,000, and alleged to be too numerous to be named individually as complainants in the bill. It was insisted in the bill that the General Assembly and Presbyteries of the Church had no power to enter into the union agreement and that the agreement was null and void. It was further insisted that the creeds of the two churches were radically different and therefore that to carry over the property of the Cumberland Presbyterian Church into the United Church would be to commit a breach of trust. It was further alleged that although the adoption of the joint report of 1906 would give it no validity, yet that its adoption would cast a cloud upon the title to 2,922 houses of

15 worship owned by the Cumberland Presbyterian Church in the various States of the Union; upon its Publishing House and equipments located at Nashville, Tenn.; its home for disabled ministers and the widows and orphans of deceased ministers, located at Evansville, Ind.; and upon its other general property; that a multiplicity of lawsuits would be occasioned by such cloud, and the work of the Church greatly embarrassed by the contentions and confusion resulting from the supposed union. Complainants had made defendants to their bill, or attempted to make defendants, J. B. Hail, the retiring moderator of the Assembly, and every commissioner, whether principal or alternate, elected by the various Presbyteries to the General Assembly of 1906; and it also attempted to make defendants every member of the Committee on Union.

Judge Johns, in an elaborate opinion, held that the General Assembly, the highest court of the Church, had jurisdiction to decide all questions arising in the construction of the organic law of the Church and all questions of doctrine; that the Assembly had decided that the union had been constitutionally agreed to, and had further decided that there was substantial identity between the two creeds. He further held that these decisions were binding upon every member of the Church and upon the civil courts. Complainants are advised and believe that the Assembly and Presbyteries would have had the inherent power to form the union had the constitution not expressly granted it, but they are advised and believe that the constitution does expressly grant powers which amount to the power to form the union. Moreover, they are advised and believe that the sovereign power of the Church was vested in the General Assembly and Presbyteries. The Assembly and Presbyteries made the Confession of Faith, Constitution and other ecclesiastical standards. Never in the entire history of the denomination have the people undertaken to make or amend any of these standards, except through their representatives in these courts. The membership of the Church includes men, women and children—

some children not exceeding six to eight years of age. Persons joining the Church are not expected or required to avow their belief in the Confession of Faith. The result is they naturally are not versed in creedal and constitutional questions as are the ministry and elders, who are required in their ordination to

avow such belief, and whose official duty requires them to pass upon constitutional and creedal questions in the courts of the Church.

Complainants are therefore advised and believe that the General Assembly and Presbyteries, in the exercise of the sovereign power may repeal or change the organic law, either by express action or impliedly, by doing a sovereign act inconsistent with the Constitution.

For about 150 years, the Presbyterian Constitutions have been construed as granting, or not withholding, the power to form such unions.

Complainants are therefore advised and believe that the decisions of the Assembly in question were, and are, correct, as well as binding upon every church member and cannot be reviewed by the civil courts, and complaints rely on such decisions as conclusive.

## VII.

Notwithstanding these obligations resting upon the opponents of union to abide by the action of the Church's constituted authorities, a number of them, said to be about ninety, who had been members of the General Assembly of 1906, who answered to the final roll call in that body, and remained in it until its final adjournment, assembled in the hall of the Grand Army of the Republic, in the city of Decatur, Ill., an hour or two after the adjournment of the General Assembly, and undertook to assume that they, a minority of the commissioners, constituted the General Assembly of the Cumberland Presbyterian Church; assumed to continue its sittings, though it had adjourned until May, 1907; assumed

17 that the offices of the Assembly had become vacant and proceeded to elect a moderator and a stated clerk. They undertook to rescind the action adopting the joint report of 1906. They assumed further that all of the officers of all the boards and permanent committees of the Church had become vacant, and proceeded to fill such supposed vacancies by the appointment of new members and officers, ignoring the requirements of the charters of the boards as to filling vacancies. They assumed that all of the houses of worship of the denomination had passed under their control, as well as the Publishing House and other general property of the Church; they assumed that all who refused to recognize their authority as the General Assembly of the Church were revolutionists and seceders; and that all ministers, officers, members, Synods, Presbyteries and congregations who recognized their authority constituted an organic continuation of the Cumberland Presbyterian Church. They undertook to adjourn the Assembly of the Church, to meet on the third Thursday in May, 1907, in Dickson County, Tennessee. Under the organic law of the Cumberland Presbyterian Church the Presbyteries were authorized to elect commissioners to attend only one session of the General Assembly. This law made no provision for a called session of the Assembly except where it failed to meet upon its own adjournment. When the Assembly of 1906 adjourned, on the 24th day of May, 1906, the term of office of every commissioner expired. There ceased to be any

commissioners to sit in a General Assembly, no one had power to call a meeting of the Assembly and the ex-commissioners could not, even by unanimous vote, have set aside the adjourning order. No attempt was ever made to set it aside, nor was any attempt made to call a meeting of the body. The minority of ex-commissioners who assembled in the Grand Army Hall, as above stated, was but a voluntary assemblage of ministers and elders, with no authority whatever to represent any Presbyteries or in any way whatever bind the Church. In assembling they were actuated by a common purpose and combined and conspired to accomplish that purpose. Their purpose was to repudiate the action

of the General Assembly and the Presbyteries in entering into  
 18 the union agreement and adopting the basis of union, and to renounce the reunited Church which resulted from the union. Their further purposes was to make the people of the Church believe that that assemblage was, in law and in fact, a continuation of the General Assembly of the Church, and that all Synods, Presbyteries, sessions, boards of deacons or congregations, or parts thereof, who recognized that assemblage as the General Assembly, would constitute the true and lawful Synods, Presbyteries, sessions, boards of deacons and congregations, and that all who recognized the General Assembly of the United Church would be mere revolutionists and seceders and would forfeit all property rights and other rights as judicatories, ministers, officers or members of the Church. They undertook to lay plans and create agencies to induce, by argument, persuasion and other means which will hereafter be referred to, as many as possible of the ministry and membership to accept as true their representations, renounce the United Church and become associates and co-workers in the combination. They appointed a legal committee for the purpose of advising the people as to the principles of law involved. This legal committee sent forth throughout the length and breadth of the denomination a printed circular declaring the law to be in accordance with the assumptions of the Grand Army Hall convention as hereinbefore set forth. The committee declared, in substance and effect, that any part of a congregation, however small the minority and regardless of the attitude of the session, which adhered to the Grand Army convention, had the right to declare vacant the office of every elder or deacon who was loyal to the reunited Church and fill his place with a renouncer; that even a minority of a session who renounce the united Church had a right to declare vacant the pastorate of their church, provided such pastor was loyal to the united Church, and fill his place with a renouncing minister; that the members of a Presbytery loyal to the Grand Army convention had a right to exclude from membership in the Presbytery and participation in its proceedings even a majority of the members who are loyal to the united Church;

that such renouncing sessions had the power to take exclusive possession and control of the houses of worship and hold  
 19 them for services conducted by renouncing ministers, excluding all others if they saw fit to do so.

Said convention also appointed an advisory board for the purpose of giving advice to the ministers and members of the Church as to their duties and otherwise carry out the purposes of the convention. Its chairman issued and circulated throughout the Church a printed circular urging the opponents of union to hasten the division of the Church as much as possible, lining up the renouncers as against the loyal members, organizing the former where they were in the minority and failed to include the officers of judicatories, urging them to get rid of loyal pastors, declaring that it was better to have no pastor than one who was loyal to the United Church, and urging them to contend for all of their property rights as declared by the legal committee. Under the authority of the convention, traveling superintendents, or canvassers, were appointed and compensated for travelling about over the State of Tennessee, or in certain Presbyteries, for the purpose of increasing dissatisfaction with the Union, augmenting the ranks of the renouncers, hastening divisions and change of pastors, and instigating contentions over church property. The fatalistic sections of the Westminster Confession of Faith, adopted about 250 years ago, were read to the people without one word of the revision of 1903, and were represented to the people as being the present creed of the United Church. It has always been the boast of the Cumberland Presbyterian Church that it was not sectional. It had religion enough to pass through the storms of the civil war and the perils of reconstruction without a division, and has ever studiously labored, and with marked success, to suppress sectional feeling. Nevertheless these champions of the renunciation have made thousands of people believe that this was not a mutual union of two denominations, but a disorganization of the Cumberland Presbyterian Church and absorption of it by the Presbyterian Church, and they have told these

20 people that the union people were going to take from them all of their church property and give it to a "Northern church," or a "Yankee church," and that the united Church would force upon them an admixture of white people and negroes in all of the congregations of the South and in all of the judiciaries of the Church, and even force upon them social equality between the races. These statements are made in the face of the amendment to the Presbyterian Constitution providing for the separation of the races wherever either race desire it. Representations were made to the people, even in public addresses, that the Presbyterians, under their Confession of Faith, claimed that every preacher had the power to forgive sins in the same manner that such power is claimed for the Pope of Rome. To support this monstrous contention there was read a section of the Confession of Faith of the united Church which stood, word for word, in the Cumberland Presbyterian Confession from 1810 to 1883, and which had attached to it a footnote explaining that this section meant nothing more than that the visible church had the power to receive persons into its membership and exclude them therefrom, a construction of the passage which had been established and recognized for centuries. It was not surprising therefore that these misrepresentations and appeals to prejudice should have precipitated di-

visions and originated strife, to the great detriment of the Church and to the discredit of Christianity. Presbyteries and sessions have been called together by the renouncers for the express purpose of precipitating a lining up between those who adhered to and recognized the Grand Army convention as the General Assembly of the Church and those who recognized the united Church.

Complainants are advised and believe that said union was legally formed, and is valid, and that the union congregation, as part of the reunited Church, is entitled to the exclusive use of said property; that the trustees of said church, who are Isaac T. Rhea, John M.

21     Gaut, and W. T. Hardison, hold the legal title to said property in trust for the congregation which is in connection with the reunited Church; that the elders of said union congregation have the right to control for the congregation the possession and use of said property and that the pastor employed by them, who is Rev. W. T. Rodgers, D. D., has the exclusive right to conduct services therein. Nevertheless, the persons claiming to be elders of said anti-union congregation, which they term Grace Cumberland Presbyterian Church, have demanded the possession of said property and the Pastor and members of the session and members of said congregation are threatening, preparing and about to take unlawful possession thereof. Should they do so, Rev. W. T. Rodgers, the Pastor of Grace Church, would be ejected from the Pulpit and the session which employed him be deprived of the control of said property and the members of the said Church, including Complainants, would be deprived of their rights and privileges as members. Many of the members of said congregation have been, and still are, living in continual apprehension of such unlawful intrusion into the Church and have been and are greatly disturbed in mind and the peace and happiness and work of the membership greatly disturbed by such a state of affairs and if allowed to continue it will work irreparable damage to the congregation, to the detriment of Complainants as Church members as well as to other members of said congregation. Such a condition will continue until Complainants' rights are adjudicated by this Court and the Defendants and those whom they represent are restrained by injunction. Since this bill was prepared a written notice purporting to come from the session of Grace Cumberland Presbyterian Church, has been served by defendant T. W. Bonham on the Clerk of the Session of Grace Church, declaring that unless the possession of the Church is turned over to Grace Cumberland Presbyterian Church by noon, April 14, 1909, they will begin suit for the same. Complainants have requested and demanded of the Trustees of said Church, and of the Elders of said Church, that they institute legal proceedings for the purpose of protecting said property and the rights of the

22     members of said congregation, but being unable to maintain a suit in this Court they have declined to do so. Complainants are advised and believe that the members and officers of Grace Church which separated from the congregation, renounced the Union of the two denominations, and entered into a separate organization,



seceded from the Church and no longer constitute members or officers in said Church but have entered into, a new and different denomination. On the other hand, Complainants are advised and believe that the Cumberland Presbyterian Church has not been extinguished by said Union, but continues to exist in the reunited Church known as the Presbyterian Church in the United States of America and that those members and officers of Grace Church who adhere to said reunited Church constitute the true and lawful officers and congregation of Grace Church.

The members of said Grace Cumberland Presbyterian Church are too numerous to be made defendants by name and process, and Complainants pray that the defendants — made such by name, not including said Trustees, be taken as the representatives of the entire membership, all of whom are citizens and inhabitants of the Middle District of Tennessee.

The premises considered, Complainants pray that the parties named as Defendants herein be made such by the service of proper process and be required to answer this bill but not upon oath, the oath being waived; that upon finally hearing the Court decree that the Trustees of said Church, named herein, and their successors and associates in office, hold the title to said property in trust for the exclusive use and benefit of the congregation of Grace Church, the congregation of which W. T. Rodgers is Pastor and which adheres to said united Church; that the session of said Church has the exclusive right to control the possession and use of the property and the Pastor employed by it the sole right to occupy its pulpit and conduct its services; that the Defendants to this bill excepting said

23 Rhea, Gaut and Hardison, and all whom they represent, including all the members of Grace Cumberland Presbyterian Church, and all who are combined or associated with them, be restrained by injunction from taking, or attempting to take, possession of the house of worship described herein, or other property contained therein or pertaining thereto and from interfering with the Pastor of said Church, or his successor or successors, in the conduct of the religious exercises or other functions as Pastor; or from in any manner disturbing or interfering with complainants, said congregation, its Pastor, officers or members, in the possession, use or enjoyment of said property, and from bringing any other suit in relation to the title or possession of said property. Complainants pray for all such other and further relief as is suited to the case.

This is the first application for injunction in this case.

JOHN M. GAUT,  
*Solicitor for Complainants.*

STATE OF TENNESSEE,  
*Davidson County:*

Before me, John H. DeWitt, a notary public in and for said county, this day personally appeared C. R. Sharp, Complainant in the foregoing bill, and made oath in due form of law that he had carefully read the foregoing bill and that the facts stated therein as

of his own knowledge are true and those stated upon information he believes to be true.

C. R. SHARP.

Sworn and subscribed to before me this the 12th day of April, 1909.

JOHN H. DE WITT,  
*Notary Public.*

Endorsed: Filed April 14, 1909. H. M. Doak, Clerk.

24 The following Exhibit "A" to the bill was filed, viz:

EXHIBIT A.

*Documentary Evidence.*

Filed — 17, 1909. H. M. Doak, Clerk.

1. *Compact of 1810.*

The formation of Cumberland Presbytery took place on February the 4th, 1810, at which time those participating in the organization entered into the following compact:

"In Dixon County, State of Tennessee, at the Rev. Samuel M'Adow's, this 4th day of February, 1810—

"We, Samuel M'Adow, Finis Ewing, and Samuel King, regularly ordained ministers in the Presbyterian Church, against whom no charge, either of immorality or heresy, has ever been exhibited before any of the Church judicatures, having waited in vain for more than four years, in the meantime petitioning the General Assembly for a redress of grievances, and a restoration of our violated rights, have agreed, and do hereby agree and determine, to constitute into a Presbytery, known by the name of the Cumberland Presbytery, on the following conditions:

"All candidates for the ministry who may hereafter be licensed by this Presbytery, and all the licentiates or probationers, who may hereafter be ordained by this Presbytery, shall be required, before such licensure and ordination, to receive and adopt the Confession and Discipline of the Presbyterian Church, except the idea of fatality, which seems to be taught under the mysterious doctrine of predestination. It is to be understood, however, that such as can clearly receive the Confession without an exception shall not be required to make any. Moreover, all licentiates, before they are set apart to the whole work of the ministry, or ordained, shall be required to undergo an examination on English Grammar, Geography, Astronomy, Natural and Moral Philosophy, and Church History. It will not be understood that examinations on experimental religion and theology will be omitted. The Presbytery may also require an examination on all, or any part, of the above branches



of literature, before licensure, if they deem it expedient."—From the Circular Letter, pp. 11, 12.

At the first regular meeting of Cumberland Presbytery, held in March, 1810, it was "ordered, that Messrs. Samuel M'Adow, Finis Ewing, Ephraim M'Lean, James B. Porter, and Young Ewing, or a majority of them, draw a Circular Letter, as soon as they can, which is to be carefully examined, and superintend the printing of a thousand copies to be distributed under the direction of Presbytery."—From Minutes of Cumberland Presbytery, March, 1810.—D., p. 1.

## 2. Circular Letter of 1810.

### A Circular Letter.

Addressed to the Societies and Brethren of the Presbyterian Church, Recently under the care of the Council by the Late Cumberland Presbytery; in Which There is a Correct Statement of the Origin, Progress, and Termination of the Difference Between the Synod of Kentucky and the Former Presbytery of Cumberland.—D., p. 2.

\* \* \* \* \*

As to the second point, the Synod had suggested that the candidates could have adopted the "Alcoran" in the same manner they adopted the Confession of Faith. This was acknowledged to be literally true, but not applicable in the case of the young men; for the Presbytery contended that the very act of the candidates' receiving the Confession at all, was an evidence that they esteemed it above all other human creeds; and the exception, or condition, in which they were indulged, was only designed to meet some conscientious scruples, in points not fundamental or essential, particularly the idea of fatality, that seemed to some of them to be there taught, under the high and mysterious doctrine of predestination.—D., p. 9.

\* \* \* \* \*

We would just add, that we have it in view as a Presbytery to continue or make another proposition to the Synod of Kentucky or some other Synod for a re-union. If we can obtain it without violating our natural and scriptural rights it will meet the most ardent wish of our hearts. If we cannot, we hope to be enabled to commit ourselves and our cause to Him who is able to keep us.—D., p. 18.

\* \* \* \* \*

26 "Whereas, This Cumberland Presbytery have made every reasonable effort to be reunited to the general Presbyterian Church; and, whereas, from the extent of our bounds, the local situation of our members, their number, etc., it is inconvenient to do business in but one Presbytery; and, whereas, the constitution of a Synod would be desirable, and, we trust, of good consequences in various respects, and particularly as a tribunal having appellant jurisdiction.—From Minutes of Cumberland Presbytery, April, 1813.—D., p. 19.

### 3. *Adoption of Confession of Faith by the Synod of 1814.*

#### Confession of Faith.

"At this same meeting of Synod, too, a committee was appointed to prepare a Confession of Faith. The next year, A. D., 1814, at Sugg's Creek Church, Wilson County, Tennessee, the report of the Committee was presented to Synod, and the revision of the Westminster Confession of Faith, which they presented, was unanimously adopted as the Confession of Faith of the Cumberland Presbyterian Church".—From Preface to Confession of Faith, 1883.—D., p. 20.

### 4. *Change in Form of Government Made by the General Assembly of 1829.*

#### III. The General Assembly.

"Subsequently the formation of the General Assembly took place. This judicature, at its first meeting, A. D., 1829, at Princeton, Kentucky, made such changes in the Form of Government as were demanded by the formation of this new court."—From Preface to Confession of Faith, 1883.—D., p. 25.

### 5. *Report of the Committees Which Prepared the Confession of Faith and Form of Government of 1883.*

To the General Assembly of the Cumberland Presbyterian Church, to Convene at Huntsville, Alabama, May, 1882:

REVEREND AND DEAR BRETHREN:

\* \* \* \* \*

27 Mindful of the fact that the Committees were appointed, not to make a new Confession, but to revise the old one, we have studied not to transcend our authority, and we have no hesitation in saying that we have not changed a single doctrine fundamental to your scheme of theology, or any of its logical correlates.—D., p. 27.

\* \* \* \* \*

#### *Form of Government.*

As to the Government of the Church, no material changes are proposed, except such as were found necessary to present more clearly the practice and usage of our Church courts, and such as were deemed proper to develop more certainly our work and resources.

In the Constitution, which takes the place of what is now termed Form of Government, are included only those fundamental princi-

pals which, with the Rules of Discipline, are not to be changed without the approval of the Presbyteries.

The General Regulations include such provisions, not fundamental in character, as are of general application, and like the Directory for Worship, and Rules of Order, may be amended by a two-thirds vote of the General Assembly. This distinction is deemed desirable in order that our progress as a denomination may not be retarded by delays in perfecting our plans of operation from time to time.—D., p. 31.

\* \* \* \* \*  
Respectfully submitted,

S. G. BURNEY,  
A. TEMPLETON,  
JOHN FRIZZELL,  
*First Committee.*

C. H. BELL,  
J. W. POINDEXTER,  
W. J. DARBY,  
R. L. CARUTHERS,  
*Second Committee.*

May 19, 1882.

—D., p. 32.

28      6. *Adoption and Submission of the Confession of Faith and Constitution of 1883.*

"Having completed its work, the General Assembly transmitted the book to the Presbyteries for their approval or disapproval," (From Preface to Confession of Faith, 1883), as is shown in the accompanying resolutions from the Minutes of that meeting (1882), page 36:

Resolved, That the Revised Confession of Faith and Government of the Cumberland Presbyterian Church, presented by the Committee on Revision, as amended by the Committee of the Whole, be and the same is hereby approved and transmitted to the Presbyteries for their action, in the following manner, that is to say:

1. Each Presbytery will, in one vote, express its approval or disapproval of the Introduction, the Confession of Faith, and the Catechism, taken together as a whole.

It being hereby distinctly understood and declared that those who have heretofore received and adopted the Confession of Faith approved by the General Assembly in 1829, and who prefer to adhere to the doctrinal statements contained therein, are at liberty to do so.

2. Each Presbytery will, in one vote, express approval or disapproval of the Constitution and the Rules of Discipline, taken together as a whole.

3. Each Presbytery will, in one vote, express approval or disapproval of the General Regulations, the Directory for Worship, and the Rules of Order, taken together as a whole.—D., p. 33.

7. *Sending Down of the Revision of 1883.*

## Revised Confession of Faith Printed and Distributed for Examination.

It was ordered that the Stated Clerk of the General Assembly shall have the Revised Confession of Faith and Government printed, and that a copy shall be sent to each of the ordained ministers, licentiates, candidates, and Clerks of church Sessions.—1882, p. 38.—D., p. 33.

29

8. *Attempts at Union.*

By the Presbytery:

We would just add, that we have it in view as a Presbytery to continue or make another proposition to the Synod of Kentucky or some other Synod for a re-union. If we can obtain it without violating our natural and scriptural rights it will meet the most ardent wish of our hearts. If we cannot, we hope to be enabled to commit ourselves and our cause to Him who is able to keep us.—D., p. 18. From the Circular Letter of 1810.

Whereas, This Presbytery, in their "Circular Letter," said it was their intention, at a proper time, to apply to the Synod of Kentucky, or some other Synod, for a reunion, but, on reflection, finding that the judicatures most proper to apply to were the Presbyteries of Muhlenburg and West Tennessee; and whereas, our Presbytery have made such application to the above Church judicatures, which application has not been acceded to on their part; and whereas, instead of manifesting a spirit of reconciliation our brethren composing a majority of the above Presbyteries have judicially and officially shut the door against the two bodies communing together;

Resolved, That Messrs. Bell and Porter are hereby authorized to inform said committee that this Presbytery agree to name a committee to meet a like committee appointed by the West Tennessee and Muhlenburg Presbyteries, conjointly, at any time and place said Presbyteries will appoint, in order to confer on the subject of reunion and other matters relative to that harmony that should exist among the members and people of Jesus Christ.—From Minutes of Cumberland Presbytery, October, 1811.

Resolved, therefore, As the opinion of this Presbytery, that we have in substance complied with our declaration in the "Circular Letter," on the subject of a reunion.

2. That, as the opinion of this Presbytery, the Muhlenburg and West Tennessee Presbyteries have closed any prospect, at present, of a reunion between the two bodies.

3. That this Presbytery have always been, and expects always to be, ready and willing for union with the general Presbyterian Church, on Gospel principles.

The Presbytery unanimously adopted the above resolutions.—  
From Minutes of Cumberland Presbytery, November, 1812.

30 \* \* \* \* \*

By the General Assembly of the C. P. Church:

Resolved, That, while we are ready to reciprocate fraternal feelings alike with all Christians, yet seeing that the great Presbyterian family embrace alike the same church government, and that in their oral addresses they are doctrinally converging to the same standpoint, the sovereignty of God and the agency of man both alike exercised and secured in the salvation of the sinner, we cherish the fond hope that the day is not far distant when the entire family shall be represented in one General Assembly. Adopted.—1860, p. 29.

(a) *With the General Assembly of the Presbyterian Church in the United States. (Southern Presbyterian.)*

Rev. T. D. Witherspoon, the delegate from the Presbyterian Church in the United States, was introduced by Rev. C. A. Davis, D. D., and addressed the General Assembly upon the subject of his mission, which was responded to in an appropriate manner by the Moderator.

Thereupon the following resolution, as amended, was adopted:

Resolved, That a committee, consisting of ministers, S. G. Burney, D. D.; B. W. McDonnold, D. D.; Lee Roy Woods, J. B. Logan, P. G. Rea; and Elders A. J. McLain and Wm. H. Holliday, be appointed to prepare a suitable minute for the action of this Assembly on the subject of organic union with the Presbyterian Church, as brought before this body by Rev. T. D. Witherspoon, the Corresponding Delegate from the General Assembly of said Church, and Rev. C. A. Davis, D. D., the delegate from our last General Assembly to that body.—1867, p. 16.—D., pp. 237, 238.

Said committee made a report, part of which is as follows:

\* \* \* \* \*

It may be truthfully said that the points of agreement between the two Churches are numerous and vital; or rather, that the points of disagreement are but few and these all confessedly among the non-essentials of our holy religion.

31 The government of the two Churches is substantially the same, both strictly Presbyterian, having the same judicatories, each with its functions and limitations clearly specified; both giving utterance to the same great conservative principles touching the spirituality and sacredness of the Church and disclaiming the legitimacy of all alliance between ecclesiastical courts and civil governments; having the same order of ministers and the same modes of induction into the sacred office; the same forms of religious worship; the same faith and practice in relation to the authority, nature, and designs of the Sacraments of Baptism and the Lord's Supper.

The formulas of faith are very similar, each Church possessing, it is mutually conceded, all that is vital to the Christian system. The modes of presenting the doctrines of the Cross by the ministers of the two Churches are generally so similar that even the well informed often fail to discover any difference. In revivals of religion their ministers and members often co-operate with great harmony and success. All these points of agreement, and the number might be much increased, tend to stimulate to organic union. There are nevertheless points of difference which make us in some respects two people in something besides the name.

It is a historic fact which lives upon the records of both Churches, and which neither could suppress if it would, that the founders of the Cumberland Presbyterian Church, when receiving ordination at the hands of the mother Church, did except the doctrine of fatality, or unconditional election and reprobation, as it was believed to be taught in the Westminster standards. The doctrine of divine decrees as set forth in those standards was regarded by them as a high mystery which they modestly declined to accept. This doctrine, as then expounded by the Presbyterian Church, soon came to be considered by our fathers as something more than a mystery, and in the compilation of their Confession of Faith it was excluded from their creed.

\* \* \* \* \*

Without prejudging the question, it is admissible to state, that in most, if not in all the great leading Churches of Christendom, the extremes of Calvinism and Arminianism are found to exist, and that the elements of these great antagonistic systems are more or less active; yet these Churches, tolerating these doctrinal differences for the sake of the advantages of organic unity, remain one and undivided.

Their chief bond of union is neither doctrinal unity nor ritualistic harmony; but it is simply the devotion to their Church organization and a common inheritance in the historic treasures of the past. This bond, by asserting its dominion over the impulsions of heart rather than over the frigid, unsympathetic dictates of an inexorable logic, proves too strong to be served by doctrinal differences.

But the two Churches in question certainly do approach each other very nearly; and if the two were to-day made organically one, without the modification of a single sentence in either Confession of Faith, there would still be more doctrinal unity and more real homogeneousness than actually exist in some Churches whose unity is their proudest boast.

Already agreeing in fundamentals, as is mutually conceded, if they can consent to mutual concession and toleration in non-essentials, charity in all things, then there can be not only organic union, but thorough homogeneousness and earnest co-operation throughout the whole body.

Without mutual concession it is presumed that the union is out of the question; for it is not understood that either Church is dissatisfied with itself.

Without toleration, the body would be convulsed with strife and

without homogeneousness it would be wanting in an essential element of effective evangelism, and the organic union would be rendered nearly valueless. This Assembly will not undertake even to indicate the inestimable blessings to the Church and to the world consequent upon such a union; and certainly will not be slow in acceding to any terms of union which are in themselves not inconsistent with justice and honor and their clear convictions of truth.

\* \* \* \* \*

In conclusion the Committee recommend the appointment of a committee of six, to confer with a similar committee appointed by the Assembly of the Presbyterian Church, at such times  
33 and places as the two committees may determine, and to report the results of this conference to the next Assembly.

S. G. BURNEY.  
LEE ROY WOODS.  
B. W. McDONNOLD.  
P. G. REA.  
W. H. HOLLIDAY.

—1867, pp. 91-95.

The foregoing report was concurred in and the following Committee of Conference was appointed, according to the recommendation:

S. G. Burney, D. D., Reuben Burrow, D. D., A. J. Baird, D. D., Milton Bird, D. D., Lee Roy Woods and J. W. Poindexter.—1867, p. 34.

The Committee appointed by the General Assembly of 1867 to confer with a committee appointed by the General Assembly of the Presbyterian Church in the United States, in regard to organic union, respectfully submit to your Reverend Body the following report:

\* \* \* \* \*

Believing that organic union on terms acceptable and honorable alike to both Churches would be eminently conducive to the glory of God in the promotion of the cause of our common Christianity, your Committee frankly proposed, in the spirit of fraternal concession, the surrender of their preferences on all the points of difference between the two Churches, except on those points which pertain to the subject of foreordination, and its cognate doctrines; concerning which, as will be seen from the papers herewith submitted, your Committee demanded only that the teachings of the Cumberland Presbyterian Confession of Faith should be accepted; or, as a substitute for this proposition, that the doctrinal symbols of the Presbyterian Confession of Faith would be accepted, if so modified as to exclude all phraseology and modes of expression which may be plausibly construed to favor the doctrine of necessity or fatality.

\* \* \* \* \*

34 The failure to consummate the union your Committee fully believe to be a matter of deep regret to many of the people of God in both Churches. The correspondence, however, has



not been without good results, for which both Churches have abundant cause of gratitude to the Giver of all good. It has manifestly contributed already in both Churches to a better understanding of their respective theological standpoints, and to a higher appreciation of each other's denominational animus, and by these means has done much to foster a spirit of mutual recognition, sympathy, and co-operation.

Respectfully submitted,

S. G. BURNEY, *Chairman.*

MILTON BIRD.

A. J. BAIRD.

J. W. POINDEXTER.

LEE ROY WOODS.

D., pp. 236-244.

*Extract from the Minutes of the C. P. General Assembly of 1868,*  
p. 14.

The report of the Committee on Organic Union, appointed by the last General Assembly, presented by S. G. Burney, D. D., was read and ordered to be printed in the Minutes of the Assembly. (See Appendix.)

The following paper was offered by R. Beard, D. D., and unanimously adopted:

4. We accept the Report of our Committee and hereby tender them the thanks of this Assembly for the ability and faithfulness which they have displayed in fulfilling the delicate trust committed to them.

*Paper No. 1 of Cumberland Presbyterian Committee.*

In consideration of the advantages of organic union between the two Churches, we, the Committee representing the Cumberland Presbyterian Church, consent to surrender our preference on the following points of difference:

1. We consent to surrender our name. In this we simply consent to make no distinctive history for the future.

2. We consent to surrender our standards on the subject of ministerial education, and to adopt those of the Presbyterian Church, or such standards as may be mutually acceptable.

3. We consent to accept the standards of the Presbyterian Church on all points of difference in the Form of Government, Discipline, and Directory, or such modification of them as may be mutually acceptable.

35 As a condition precedent to these concessions, we respectfully ask that the Confession of Faith and Catechism of the Cumberland Presbyterian Church shall be adopted instead of the Confession of Faith and Catechism of the Presbyterian Church.

Or, as an alternative to the above, we agree to adopt the Confession of Faith and Catechism of the Presbyterian Church, modified



substantially according to the indications given in a paper herewith submitted.

Or, if it shall appear more satisfactory to our brethren of the Presbyterian Church, we consent to a new compilation upon the basis of the Westminster standards, which new compilation shall exclude all phraseology and modes of expression which can be plausibly construed to favor the idea of fatality or necessity.

*(b) With the General Assembly of the Presbyterian Church in the United States of America. (Northern Presbyterian.)*

The following from the Committee on Correspondence was adopted:

Your Committee report that they have received a telegraphic dispatch from Rev. A. J. Baird, D. D., your corresponding delegate to the Presbyterian General Assembly, now in session at Baltimore, from which we learn that that body has appointed a Committee on Union, to meet a similar committee to be appointed by this General Assembly. Your Committee recommend, therefore, that you proceed at once to raise that Committee, and that you inform your delegate of your action; also that your Committee on union be composed of the following named brethren: Ministers—Richard Beard, D. D., Lebanon, Tenn.; with Stanford G. Burney, D. D., Jackson, Tenn., alternate; J. B. Mitchell, D. D., College Mound, Mo., with L. C. Ransom, Memphis, Tenn., alternate; A. B. Miller, D. D., Waynesburg, Pa., with Samuel Richards, D. D., Lincoln, Ill., alternate; and Elders R. L. Caruthers, Lebanon, Tenn., with J. M. Howry, Oxford, Miss., alternate; and A. P. Stewart, St. Louis, Mo., with F. M. Cockrell, Warrensburg, Mo., alternate.—1873, p. 22.

The name of A. J. Baird, D. D., was added to the Committee.—1873, p. 35.—D., pp. 253, 254.

\* \* \* \* \*

Following is the report of the Committee:

36 To the Moderator of the General Assembly of the Cumberland Presbyterian Church, Springfield, Mo.:

The Committee appointed by the last General Assembly to meet a similar Committee appointed by the General Assembly of the Presbyterian Church to confer on the subject of a union between the two Churches, present the following report:

\* \* \* \* \*

The Committee beg leave, however, to be heard upon a few brief considerations which governed them in framing the proposition. Not to mention the truism that union is strength and disunion is weakness, nor the oft-repeated argument of Romanism against us, that our divisions are a perpetual proof that, as Protestants, we have departed from the truth, we proceed to mention:

First. That the Scriptures are certainly very clear on the subject of brotherly kindness, charity, mutual forbearance, and the necessity

of coöperation in our efforts to promote the kingdom of our dear Redeemer. And our Savior in his last prayer when the whole work of his prospective Church was, doubtless, before his mind, if he did not mean in his prayer that his followers might be one, in what has come to be called organic union, where outward circumstances would admit of it, he did surely mean and pray that there should be such a union amongst them as would exclude the selfishness and pride and ambition which we too often see in the denominations.

Secondly. We receive the impression that our fathers would not have chosen to leave the Presbyterian Church, if they could have been permitted to remain in it in peace and preach the doctrines which they afterwards embodied in their Confession of Faith. Their setting up for themselves was a matter of life and death. This relieved their actions at the time, relieves their memory now, from the guilt and odium of schism.

Thirdly. The feeling of good men and the tendencies of the present time, are in the direction of more fraternal sympathy and more earnest coöperation amongst Christians of all Protestant denominations. We all feel that there are dangers from without, there being an enemy sleepless and untiring and always ready to assail us in our weak points. We ought, as far as we can, to strengthen the things within. Whilst, however, we may endeavor to do this, we are not to embarrass and cripple ourselves, it is true, with unnatural and useless complications of any kind.

Fourthly. But the usages, modes of worship, and general principles of government, in all Presbyterian Churches in this country, are the same. In worship, therefore, and coöperative action, there needs be no friction resulting from a connection between ourselves and the Presbyterian Church. If we can agree to disagree in regard to what separates us, and still harmonize our efforts in the things in which we agree in promoting the great interests of the kingdom of Christ, it would certainly be a gain to the cause of truth and righteousness. The example too would be worth something.

Fifthly. When we speak of agreeing to disagree upon the questions which separate us, we do not mean that we are to be restricted and trammelled in preaching our own doctrines. The proposition is, that if a union takes place, we take our Confession of Faith with us, and that means that we preach its doctrines. Our Presbyterian friends are to do the same if they choose. We agree not to be offended with each other at this course. Is not such a condition of things in the exercise of Christian forbearance possible?

The foregoing statements relate to the theological differences between these Churches. There is one point in the matter of government upon which a great many of our ministers, and perhaps others, will be sensitive. We allude to ministerial qualification. Our proposition embraces the Presbyterian rule. On this subject we reason thus:

1. That we are making great efforts to educate up to an equality with the Presbyterian standard. We are making liberal provisions with a view to this very end.

2. The Presbyterian rule admits of exceptions, nor is it practically

stringent in regard to those exceptions, if the men who claim the benefit of them are really promising and worthy.

3. The right of judging in all such cases is in the hands of the Presbyteries. They can control and will do it. Good and promising men, although technically uneducated, would not, we believe, be excluded.

\* \* \* \* \*

38 We consider that the Presbyterian Church has a great deal more to surrender on the score of Church prestige and all that belongs to the merely human aspect of the question than we have. It is far superior in numbers, in wealth, in learning, in social position; it has a history running through three hundred years. Many of the lines of that history are traced in blood. It has numbered martyrs in its fold. We cannot despise such a Church. Whilst we may dissent earnestly from some of its teachings, we are compelled to respect the teacher. Now our proposition is, if we make any change in the direction here considered, that we stand side by side with this denomination upon the ground of an essential equality. Is not this enough for us?

Finally. We submit this whole question to the prayerful consideration of the Assembly. Grave and vital interests are involved. We do not advise haste, rather otherwise. Let us take time, let us examine and consider the question in all its bearings, looking to the indications of Divine Providence, endeavoring to learn, if possible, what God would have us to do. It is to be understood, too, that we are only reporting progress and not a final consummation of anything.

R. BEARD.  
A. J. BAIRD.  
J. B. MITCHELL.  
A. B. MILLER.

\* \* \* \* \*

THURSDAY MORNING.

The Joint Committee having convened at the hour appointed, at the request of the Chairman, prayer was offered by Dr. Baird.

The minutes were read and approved.

On motion of Dr. Baird, it was decided that opportunity should be given for the presentation of papers setting forth plans of union of the Churches represented. Whereupon the Chairman of the Committee on the part of the Cumberland Presbyterian Church submitted the following:

We, the Committee on the part of the Cumberland Presbyterian Church, submit the following as a basis of union between our Church, and the Presbyterian Church here represented.

1. That both Confessions of Faith shall be retained as they are and shall be regarded as of equal authority as standards of evangelical doctrine; and, hereafter, in the licensure of candidates, and in the ordination of ministers or other officers of the Church, or on any occasion when it shall be necessary to adopt a

Confession of Faith, it shall be left to the choice of the individual as to which of these he shall adopt.

2. That the Form of Government and Discipline of the Presbyterian Church shall be the Form of Government and Discipline of the United Church.

3. That the United Church shall be known as the Presbyterian Church of the United States of America.

\* \* \* \* \*

If the above should be accepted by the Joint Committee, we propose to submit some details, consistent with this paper, but not embodied in it.

RICHARD BEARD,  
J. B. MITCHELL,  
A. J. BAIRD,  
A. B. MILLER,  
*Committee.*

—D., pp. 254-261.

\* \* \* \* \*

(c) *With the General Synod of the Evangelical Lutheran Church.*

\* \* \* \* \*

The Committee on Correspondence submitted the following, which was adopted:

From the communication from the General Synod of the Evangelical Lutheran Church, directed to your body by the Rev. William Hull, who was appointed to attend the same, we learn that a Committee on Organic Union has been appointed by their Synod, and two committees have been appointed by former General Assemblies of this body, but said committees failed to attend said Synod. We suggest that you appoint Ministers J. P. Sprowls, A. B. Miller, J. M. Gill, H. D. Onyett, and W. J. Darby, a Committee to meet their

40 Committee in conference, and we most heartily pray that a union if practicable, may be consummated, also that Rev. J. P. Sprowls be appointed delegate to the Synod at its next sitting, and Rev. A. B. Miller his alternate.—1882, p. 30.

The following report of the Committee on Organic Union with the Evangelical Lutheran Church, was concurred in:

To the General Assembly of the Cumberland Presbyterian Church.

MODERATOR AND BRETHREN: The Committee on Organic Union, appointed at the last General Assembly, to meet a similar Committee from the General Synod of the Evangelical Lutheran Church would report:

\* \* \* \* \*

4. That the correspondence be continued, and that the present General Assembly, if thought best, appoint a committee to meet a similar committee from the General Synod, and that the General Assembly suggest a meeting of these committees some time during the coming autumn or early winter.—1883, pp. 30, 31.

[NOTE.—It appears that the correspondence looking to organic

union with the Evangelical Lutheran Church was discontinued.—J. V. S.]

(d) *With the General Conference of the Methodist Protestant Church.*

\* \* \* \* \*

Your Committee on Correspondence submit the following report:

We have read with much pleasure a communication from W. H. Wills, D. D., appointed to bear to this General Assembly fraternal greetings from the General Conference of the Methodist Protestant Church, in which he speaks so kindly and brotherly of our Church, and suggests that if a committee should be appointed by this body to confer with the President of that body looking to an organic union, such a Committee would be received with pleasure. We suggest that you appoint Rev. E. K. Squier a corresponding delegate to that body, with liberty to confer freely with the same on the subject, and report the result to the next General Assembly, and that a minute of what you do in the matter be mailed by the Stated Clerk to W. H. Wills, D. D., Philadelphia, Pa., as he requests. Adopted.—1882, p. 29.

\* \* \* \* \*

In reference to the foregoing the following was adopted:

While we are not disposed to encourage the agitation of the subject of organic union with other bodies, where there is not a reasonable prospect of good resulting, yet we are free to say that if the union of our Church with the Methodist Protestant Church can be effected in a way satisfactory to both parties, it is a consummation devoutly to be prayed for. And we venture to say that, so far as we understand the doctrine and polity of that Church, we do not see any very formidable difficulty in the way of the accomplishment of this work. If we are in harmony in doctrine and Church polity, let us combine our forces, thereby strengthening each other's hearts and hands as we go forth to labor in the vineyard of our common Lord and Master.

We submit for your adoption the following recommendation, viz.: That you appoint a committee of five to confer with the commission appointed by the Methodist Protestant Church, on the subject of organic union, and to report to the next General Assembly.—1885, p. 37.

The Moderator appointed the following as a Committee on Organic Union with the Methodist Protestant Church: The Revs. S. L. Russell, A. J. McGlumphy, W. H. Black; and Ruling Elders John Frizzell and A. B. Martin.—1885, p. 38.

The following is the report of the joint conference:

\* \* \* \* \*

"1. We have carefully examined the creeds of the two Churches, and find no difference whatever except that which might grow out of the doctrines of the 'preservation of believers' and 'apostasy,' which we agree are not essential to the Christian system, and may with propriety be left open and unexpressed in the creed of the

united Church. We have also examined the formulated expressions of the creeds of the respective Churches, as stated in the Confession of Faith of the Cumberland Presbyterian Church and the Discipline of the Methodist Protestant Church; and while each sets forth  
42 the doctrines clearly, that of the Cumberland Presbyterian Church is more full and systematic, and we could confidently recommend it to the favorable consideration of a joint convention of the two Churches, if such should be held.

"2. We have at much length discussed the polity of the respective Churches, and are of the unanimous opinion that no serious impediment to an organic union exists in their government, but that a satisfactory adjustment may be accomplished."

\* \* \* \* \*

"We believe the union, if consummated, will be for the glory of God and for the advancement of his kingdom, and can see no sufficient reason why two bodies of Christians so alike in doctrine, government, and practice, should long remain as separate organizations.

"In the name of our divine Master we submit these views to the Churches, and recommend that they take such further action in the matter as they may deem best.

"G. B. McELROY, *Chairman*.

"W. H. BLACK, *Secretary*.

"S. L. RUSSELL.

"J. W. HERING.

"J. J. SMITH.

"F. H. M. HENDERSON.

"A. J. McGLUMPHY.

"ANDREW B. MARTIN."

This report was placed on the docket.—1886, pp. 15, 16.

The Report on Organic Union was taken from the docket for consideration and the following paper on the subject was adopted:

Whereas, The report of the joint convention of the Committees on Organic Union, appointed by the General Assembly of the Cumberland Presbyterian Church and by the General Convention of the Methodist Protestant Church, is before us; and,

Whereas, The matters involved are of great consequence to the kingdom of God, and should not be decided without due deliberation; and,

Whereas, The Methodist Protestant General Conference does not meet until May, 1888, and hence there is no need of haste; therefore,

Resolved, That the said report be referred for action to the  
43 next meeting of this General Assembly, at Covington, Ohio, May, 1887.—1886, p. 33.

#### Organic Union.

The General Assembly went into a Committee of the Whole to consider the subject of Organic Union with the Methodist Protestant Church.

The Committee of the Whole presented to the General Assembly as its report the following paper, which was adopted:

The report of the Committee appointed at the meeting of the General Assembly, May, 1885, upon the subject of organic union between the Methodist Protestant and the Cumberland Presbyterian Churches, and which was postponed at the last meeting of the General Assembly for action at this meeting, has been duly considered, and as expressive of the views of the General Assembly upon the subject, it is hereby declared:

1. We are gratified at finding in the action of the joint Committee contained in said report, so much of the spirit of Christian fellowship and liberality of sentiment. Such a disposition is to be commended, and should always characterize the intercourse of those who worship the same God, accept the same Christ, and believe in the same Bible.

2. We note with pleasure that in the opinion of the joint Committee the creeds of the two Churches are so nearly alike, and that in their opinion the only differences existing are not essential to the Christian system. However, in this connection, and with all deference and respect for the opinions of all concerned, we must express our unwillingness to omit from our system of faith a doctrine so precious to us as that of the "preservation of believers."

3. We rejoice to know that in the opinion of the joint Committee, the Confession of Faith of the Cumberland Presbyterian Church is, as to doctrines, so full and systematic that the Committee "could confidently recommend it to the favorable consideration of a joint convention of the two Churches;" and that said joint Committee "are of the unanimous opinion that no serious impediment to an organic union exists" in the government of the two Churches.

4. In view of the facts thus appearing, the Moderator is directed to appoint a commission of seven members, who shall be, and they are hereby, authorized and empowered to confer with any commission or committee appointed by the Methodist Protestant Church upon this subject, and with them to agree, subject to the approval and ratification of the General Assembly, upon such terms of organic union as to them may seem right and proper.

#### Committee on Organic Union.

In compliance with the foregoing recommendations, the Moderator appointed the following Committee on Organic Union: S. L. Russell, W. H. Black, A. B. Martin, John Frizzell, A. J. McGlumphy, D. E. Bushnell, E. B. Crisman.—1887, pp. 33, 34.

[NOTE.—This Committee never made a report, for the reason that the Methodist Protestant General Conference took unfavorable action on organic union, before the next meeting of the General Assembly.—J. V. S.]—D., pp. 264-276.



From the Minutes of the General Assembly of 1898.

*Report No. 2 of the Committee on Judiciary, Regarding Church Union.*

The Committee on Judiciary submitted the following report, which was adopted:

The Judiciary Committee report on the following resolution, which was referred for our consideration:

Whereas, The Constitution of the Cumberland Presbyterian Church declares that "the General Assembly is the highest court of the church, and represents in one body, all the particular churches thereof, . . . and constitutes the bond of union, peace, correspondence and mutual confidence among all of its churches and courts;" and that it has power "to concert measures for promoting the prosperity and enlargement of the church; . . . to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this church; to authorize synods and presbyteries to exercise similar power in receiving bodies suited to become constituents of those courts, and lying within their geographical bounds;" respectively, and,

Whereas, All schemes and proposals for consolidation, or for co-operation, with other churches are of such nature that they fall within the scope of the Assembly's constitutional power; therefore,

Resolved, That no such proposals should be made to other churches by any part of this church, nor if made by other churches, or part thereof, should they be publicly considered by any part of this church until after the General Assembly shall have properly authorized such proceedings.

F. R. EARLE.

45 The Judiciary Committee unanimously recommended said resolution for adoption by the General Assembly.

HAMILTON PARKS.

J. L. CRAWFORD.

F. H. PRENDERGAST.

A. W. FITE.

CHAS. O. PATTON.

ALONZO PEARSON.

J. G. MILLER.

W. D. WEAR.

(Pp. 55-56.)

From the Minutes of the General Assembly of 1890.

*Report of the Board of Missions of the C. P. Church.*

Japan Mission.

\* \* \* \* \*

The elaborate annual report of our Board from the Japan Mission, and the details of the work herewith submitted is full, and since they supply a wealth of information, will be read, we believe, with deep interest:

\* \* \* \* \*



At the meeting of the Synod of the United Church of Christ in Japan, held in the city of Tokyo, in May, 1889, a committee of five, three native brethren and two foreign missionaries, were appointed to confer with the Japanese Cumberland Presbyterian Church on the subject of Church Union. The United Church (Nipponichi Kyokwai) is composed of the American Presbyterian Church, North, the Presbyterian Church, South, German Reformed, Dutch Reformed, and the United Presbyterian Church of Scotland. They offered as a basis of Union the Declaratory Act of the United Presbyterian Church of Scotland. Our church appointed two native brethren and two missionaries as their Committee on Union, and after having voted church by church in favor of the proposed union, gave the Committee full powers to arrange for its consummation. Inasmuch as our own General Assembly had already declared that the union upon such a basis would meet its approbation, the native church assented all the more cordially thereto. The respective committees having met, it was arranged that the churches in the province of Kii and in Osaka should be enrolled in the Naniwa Presbytery, and the Tokyo Church in the Tokyo Second Presbytery. The Churches will send their representatives to the spring meeting of their respective Presbyteries. The following is the Declaratory Act on the basis of which the union has been effected:

Whereas, The formula in which the Subordinate Standards of this church are accepted requires assent to them as an exhibition of the sense in which the Scriptures are understood:

Whereas, These Standards, being of human composition, are necessarily imperfect, and the church has already allowed exception to be taken to their teaching, or supposed teaching, on one important subject; and,

46 Whereas, There are other subjects in regard to which it has been found desirable to set forth more fully and clearly the view which the Synod takes of the teaching of the Holy Scriptures; therefore, the Synod hereby declares:

(1) That in regard to the doctrines of human redemption, taught in the Standards, and in consistency therewith the love of God to all mankind, his gift of his Son to be the propitiation of this whole world, and the free offer of salvation to man, without distinction, on the ground of Christ's perfect sacrifice, are matters which have been, and continue to be regarded by this church as vital in the system of gospel truth, and to which due prominence ought ever to be given.

(2) That the doctrine of the divine decrees, including the doctrine of election unto eternal life, is held in connection and harmony with the truth that God is not willing that any should perish, but that all should come to repentance; and that he has provided salvation sufficient for all, adapted to all, and offered to all in the gospel, and also with the responsibility for his dealing with the free and unrestricted offer of eternal life.

(3) That the doctrine of man's total depravity and of his loss of all ability or will to any spiritual good accompanying salvation is not held as implying such a condition of man's nature as would

affect his responsibility under the law of God and the gospel of Christ; or that he does not experience the striving and restraining influences of the Spirit of God; or that he cannot perform actions which do not spring from a renewed heart, are not spiritual good and holy—such as accompany salvation.

(4) That while none are saved except through the mediation of Christ, and by the grace of his Holy Spirit, who worketh when and where and how it pleaseth him; who, while the duty of sending the gospel to the heathen, who are sunk in ignorance, sin and misery, is clear and imperative and while the outward and ordinary means of salvation for those capable of being outwardly called by the Lord are the ordinances of the gospel; in accepting the Standards it is not required to be held that any who die in infancy are lost, or that God may not extend his grace to any without the pale of ordinary means, as it may seem good in his sight.

(7) That in accordance with the practice hitherto observed in this church, liberty of opinion is allowed on such points in the Standards, not entering into the substance of the faith, as the interpretation of the six days in the Mosaic account of creation, the church guarding against the abuse of this liberty to the injury of the church.

These are the articles of the Declaratory Act which relate to the doctrinal liberty we have in the United Church. (Pp. 55, 56.)

The Board of Missions in its report said:

Your Board heartily commend the zeal and enterprise of your missionaries in Japan and recommend the indorsement of the union affected. (Page 59.)

### *Report of the Committee on Missions.*

The report of the Committee on Missions was amended and adopted as follows: (Page 25.)

\* \* \* \* \*

6. That you indorse the action of our missionaries in Japan in forming a union with the other Presbyterian bodies of that empire and humbly pray the largest results may be realized therefrom. (P. 27.)

### *II. The Cumberland Synod.*

"These Presbyteries, in October, A. D. 1813, met in the Beech Church, in Sumner County, Tennessee, and constituted a Synod."—From Preface to Confession of Faith, 1883.

At these sessions of Synod, the brief view of the doctrines and discipline, etc., of the Cumberland Presbyterian Church, in Woodward's edition of Buck's Theological Dictionary, was unanimously approved of, and directed to be published in that work, and reads as follows:

Doctrines.—It has been already observed, that the Presbyterian Confession is their [Cumberland Presbyterians'] Confession, "except the idea of fatality." But as some may think this too indefinite,

it may be proper here to state explicitly all the essential doctrines or tenets they hold.

\* \* \* \* \*

They dissent from the Confession—in, 1st. That there are no eternal reprobates. 2d. That Christ died, not for a part only, but for all mankind. 3d. That all infants, dying in infancy, are saved through Christ and sanctification of the Spirit. 4th. That the Spirit of God operates on the world, or as co-extensively as Christ has made the atonement, in such a manner as to leave all men inexcusable.—D., pp. 21, 22.

9. *The Minutes of the General Assembly of the Cumberland Presbyterian Church for the Year 1903.*

Report of the Committee on Overtures, No. 1.—Organic Union.

The Committee on Overtures submitted a report, No. 1, which was adopted and is as follows:

48 We, your Committee on Overtures, beg leave to report as follows: That your Committee has carefully considered all memorials and resolutions on the subject of Organic Union that have been submitted to us. We note with pleasure a manifest tendency toward closer co-operation in Christian work, among all Protestant denominations, and particularly a disposition among ecclesiastical families which are allied in doctrine and polity, to set aside their minor points of difference and to emphasize only things essential. This tendency is in accord with the spirit of the Master and with the history and the traditions of the Cumberland Presbyterian Church, and is certainly calculated to advance the kingdom of God among men. It is a matter for devout prayer by the whole Church, that this tendency may continue in its growth toward closer affiliation and organic union among the members of the Presbyterian household in the United States until there shall be such a removal of the differences in doctrine, polity, and social conditions as will insure the consummation and realization of a glorious and united Presbyterianism in the United States.

We, therefore, recommend to the General Assembly the adoption of the following resolutions:

Resolved, 1. That a Committee of Nine, on Presbyterian Fraternity and Union, be appointed by this Assembly to confer with such like Committees as may be appointed by other Presbyterian bodies, in regard to the desirability and practicability of closer affiliation and organic union among the members of the Presbyterian family in the United States, and if, in any particular case, after conference and investigation, union shall seem to be desirable and practicable, to suggest suitable measures for its accomplishment, and to report such basis of union as may be mutually agreed upon to the next General Assembly.

Resolved, 2. That the foregoing resolution be reported immediately

to the Presbyterian bodies now in session, and in due course to all other Presbyterian bodies in the United States.

Respectfully submitted,

S. M. TEMPLETON, *Chairman*.

FRANK RUSSELL.

R. L. VANNICE.

J. C. SMITH.

S. L. HOGAN.

F. Z. KING.

THOS. H. COBBS.

R. H. SHACKLETT.

JOHN M. GOWDY.

W. H. HAMILTON.

M. B. RIKER.

JOHN H. DE WITT.

L. C. BOLIN.

W. R. SHAVER.

As Report No. 2, the Committee on Overtures submitted the following majority and minority papers, which were as follows:

### Majority Report.

Your Committee on Overtures submit report No. 2 as follows:

We recommend the following plan for the selection of the Committee on Presbyterian Fraternity and Union:

- 49 1. That the General Assembly elect the Chairman of said Committee in the same manner that it elects a Moderator.
2. That the Synods be divided into four groups, approximately equal in respect to the number of Commissioners in the Assembly, to which the several Presbyteries in the said Synods are entitled, as follows:
  - First Group. Tennessee Synod, 44 Commissioners; Mississippi, 10; Alabama, 16; total, 70.
  - Second Group. Texas Synod, 58 Commissioners; Indianola, 16; total, 74.
  - Third Group. Missouri Synod, 32 Commissioners; Arkansas, 20; Kentucky, 18; total, 70.
  - Fourth Group. Pennsylvania Synod, 8 Commissioners; Ohio, 6; Indiana, 8; Illinois, 24; Iowa, 6; Kansas, 10; Pacific, 8; Oregon, 8; total, 78.
3. That after the election of the Chairman by the General Assembly, the Commissioners present from the four groups shall assemble separately, and each group shall nominate to the Assembly, for election, as members of the said Committee, one minister and one ruling elder.

After a lengthy discussion upon the foregoing papers, the Majority report was adopted.

### Election of Chairman of Committee on Fraternity and Union.

Taking up the special order of the evening, the Assembly proceeded to the election of Chairman of the Committee on Presbyterian Fraternity and Union, which resulted in the unanimous and enthusiastic election of the Rev. W. H. Black, D. D., President of Missouri Valley College, Marshall, Mo.

## Committees on Fraternity and Union.

Reports were made as to the election of members to constitute the Assembly's Committee on Presbyterian Fraternity and Union, as follows:

Chosen by the Commissioners from the Synods of Alabama, Mississippi and Tennessee: the Rev. Ira Landrith, of Nashville, Tennessee, and Elder E. E. Beard, of Lebanon, Tennessee.

Chosen by the Commissioners from Texas and Indianola Synods: the Rev. S. M. Templeton, Clarksville, Texas, and Elder M. B. Templeton, of Waxahachie, Texas.

Chosen by the Commissioners from the Synods of Arkansas, Kentucky and Missouri: the Rev. B. P. Fullerton, D. D., St. Louis, Missouri, and Judge W. E. Settle, of Frankfort, Kentucky.

Chosen by the Commissioners from the Synods of Illinois, 50 Indiana, Iowa, Kansas, Ohio, Oregon, Pacific and Pennsylvania: the Rev. D. E. Bushnell, D. D., Alton, Illinois, and Pres. A. E. Turner, of Waynesburg, Pennsylvania.

It was determined that there should be an enlargement of said Committee, and, on motion, Rev. W. J. Darby, D. D., and B. G. Mitchell, D. D., were added to the Committee.

10. *Minutes of the General Assembly of the Cumberland Presbyterian Church for the Year 1904.*

## Report of the Committee on Fraternity and Union.

To the General Assembly of the Cumberland Presbyterian Church.

DEAR BRETHREN IN THE LORD: The greatest responsibility which has been imposed upon any committee of our Church for many years has been upon us. We have felt the honor of the position as well as the confidence which is implied in our appointment. The method of appointment has been vindicated by our practical experience in the work of the committee. We have felt that every part of the Church geographically and every view of the Church sentimentally were represented in the committee, and that our work therefore would not be lacking in representative character. We cannot undertake to write in this report the nature of the very delicate task which we had to perform, nor to give the details of the process by which our conclusions were reached. Processes are always important, but not nearly so valuable as results. Moreover, a recitation of processes would greatly overload our report, a burden which we think you should be spared. We shall be content, therefore, with a recitation of the historical facts connected with our appointment and work, and then submit the result for your consideration, and, we hope, for your adoption.

\* \* \* \* \*

## Prayer.

(1) Very soon after the appointment of our committee, the members entered into a "covenant with God and with one another to pray

each day for divine direction in carrying out, for God's glory, the momentous work entrusted to us; to pray each day for one another, that each may be filled with God's Spirit; to pray each day for our beloved Church, that she may be divinely led and illuminated in these critical months; and to pray for the committees of other Churches with whom we may be in correspondence, that they may have the mind of Christ."

We were subsequently advised that the Presbyterian brethren had also entered into a covenant of prayer.

51 At the suggestion of Rev. E. D. Pearson, D. D., the pastor emeritus of our church at Louisiana, Mo., and with the hearty approval of the committee, a call was made upon the Church to make the conference of our committee, September 29th, 30th, and October 1st, 1903, an occasion of united and fervent prayer. The response was extremely gratifying.

### Informal Organization.

(2) In order to divide, simplify and expedite the work imposed upon the committee, the chairman assumed the responsibility of appointing four sub-committees, as follows:

On Questions of Doctrine—Dr. Bushnell, Chairman; Dr. Mitchell and Dr. Black.

On Questions of Polity—Dr. Templeton, Chairman; Dr. Landrith and Judge Templeton.

On Questions of Property—Judge Beard, Chairman; Judge Settle and President Turner.

On Questions of Administration—Dr. Darby, Chairman; Dr. Fullerton, Dr. Tinnon and Judge Settle.

By this means a degree of maturity and unanimity was secured at our coming together which otherwise would not have been possible. These reports were very full, were carefully drawn and were fundamental in all our subsequent work.

### Conference in New York.

(3) After the exchange of correspondence between Dr. Black and Dr. Roberts, they came together in conference at Murray Hill Hotel, in New York City, on July 8th, 1903. They spent most of the day in fraternal discussion of the work before their respective committees and anticipated every serious question which came up in subsequent negotiations. The results of their interview led them to agree upon a time and place for a joint meeting of the two committees.

### The First St. Louis Meeting.

(4) Every member of your Committee on Fraternity and Union was present at the Southern Hotel in St. Louis on the morning of September 29th, 1903, and remained until the night of October 2d. Some of the members of the Presbyterian committee were unavoidably absent.

\* \* \* \* \*



The meeting was characterized by hard work, continuing late into the night, but all done cordially and with absolute frankness. The devotional features of those days of Christian fellowship are unforgettable. Progress toward agreement was deliberate, but hearty. Our committee was unanimous in all its acts. Proposals and counter-proposals were passed between the two committees. Joint meetings were held, presided over by the Chairmen acting together, and points of difference freely and fully discussed. At last it became apparent that our work could not be finished at that time, hence the whole matter was referred to a joint sub-committee composed of three from each Church. The principal unsettled points were the form of recognizing our Confessions of Faith, the form of expressing liberty of belief, and the form of expressing the agreement on the race and nationality question. Rev. S. J. Nicholls, D. D., LL. D., Chairman of the Presbyterian Committee on the Territorial Limits of Presbyteries, was by invitation present with us and gave us the benefit of the proposed recommendation of his committee as it bears on the race and nationality question.

#### The Cincinnati Meeting.

(5) The sub-committees met at the Gibson House, Cincinnati, Ohio, December 29-31, 1903. There were present on the part of the Presbyterian Church in the United States of America Dr. Roberts, Dr. Dickey and Reuben Tyler, and on the part of the Cumberland Presbyterian Church, Dr. Black, Dr. Templeton and Judge Settle. For three days these brethren sat in close fraternal counsel on the matters referred to them. They reached a unanimous agreement on the last day of the year and signed a report which was to be presented at the meeting of their general committees to be held in St. Louis in February, 1904.

#### The Final Meeting in St. Louis.

(6) At the meeting at the Southern Hotel, St. Louis, Mo., February 17-20, 1904, all the members of our committee were present, except Moderator Tinnon, who was detained by serious illness. The members of the Presbyterian committee were present except Dr. Davies, Dr. Smith, Mr. Wells and Mr. Perkins. As before, the Chairmen presided together at the joint sessions of the committees. The devotional feature was marked throughout the proceedings. The report of the sub-committee was reviewed, item by item, and, after the fullest, frankest, most candid and prayerful consideration, was modified in a few particulars, and unanimously and joyously adopted and signed on the afternoon of the fourth day, it being February 20th, 1904.

#### Review.

(7) Altogether twelve days were spent in joint conference on the subject of the organic union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America and in the framing of the Joint Report on Union, which is

herein submitted. The Chairmen were in conference one day in New York; the general committees were in session four days at the first St. Louis meeting; the sub-committees were in session three days at Cincinnati; and the general committees were again in session four days at St. Louis: In addition to the above there was a large correspondence by letter and numerous informal conferences between various members of the committees and with other brethren. All phases of the arguments for and against union were before us. No new light has been added since the adoption and publication of the report. We had the benefit not only of every point  
 53 of view of our own Church, but of the Presbyterian Church as well. We bore in mind constantly the fact that there were two Churches to be considered and that any plan we adopted would be subject to the criticism of both denominations. We have done the best we could. As time passes we grow more and more contented with the results of our labors. We sincerely and heartily believe that what we have done is for the honor and future welfare of our beloved Cumberland Presbyterian Church and worthy of all her noblest traditions; that it is for the honor and future welfare of the Presbyterian Church in the United States of America and worthy of all her noblest traditions; and that it is the crystallization of Providential tendencies which are imperative in their demands upon the Churches and which will certainly ultimate in the spread of the gospel and consummate in the glory of our heavenly Father. The glory of the Church is its unity. "The glory which thou hast given me I have given unto them: that they may be one, even as we are one; I in them, and thou in me, that they may be perfected into one; that the world may know that thou didst send me, and lovedst them, even as thou lovedst me."

## 2. The Joint Report on Union.

As the second part of our report we submit the following Joint Report on Union:

The Committee on Church Co-operation and Union of the Presbyterian Church in the United States of America, and the Committee on Fraternity and Union of the Cumberland Presbyterian Church, after a free and full interchange of views, with continued supplication for divine guidance, unanimously recommended to their respective General Assemblies for their consideration, and if they deem proper, for their adoption, the accompanying papers, viz.:

- I. Plan of Reunion and Union of the two Churches.
- II. Concurrent Declarations to be adopted by the respective General Assemblies meeting in 1904.
- III. Recommendations.

### I. Plan of Reunion and Union of the Two Churches.

We believe that the union of Christian Churches of substantially similar faith and polity would be to the glory of God, the good of mankind, and the strengthening of Christian testimony at home and abroad.

We believe that the manifest providential developments and leadings in the two Churches since their separation, together with present conditions of agreement and fellowship, have been and are such as to justify their reunion.

Therefore, we cordially recommend to our respective General Assemblies, that the reunion of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church be accomplished as soon as the necessary steps can be taken, upon the basis hereinafter set forth.

54 1. The Presbyterian Church in the United States of America, whose General Assembly met in the Immanuel Church, Los Angeles, Cal., May 21st, 1903, and the Cumberland Presbyterian Church, whose General Assembly met in the First Cumberland Presbyterian Church, Nashville, Tenn., May 21st, 1903, shall be united as one Church, under the name and style of The Presbyterian Church in the United States of America, possessing all the legal and corporate rights and powers which the separate Churches now possess.

2. The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice.

3. Each of the Assemblies shall submit the foregoing Basis of Union to its Presbyteries, which shall be required to meet on or before April 30th, 1905, to express their approval or disapproval of the same by a categorical answer to this question:

"Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice?"

Each Presbytery shall, before the tenth day of May, 1905, forward to the Stated Clerk of the Assembly with which it is connected, a statement of its vote on the said Basis of Union.

4. The report of the vote of the Presbyteries shall be submitted by the respective Stated Clerks to the General Assemblies meeting in 1905, and if the General Assemblies shall then find and declare that the foregoing Basis of Union has been approved by the constitutional majority of the Presbyteries connected with each branch of the Church, then the same shall be of binding force, and both Assemblies shall take action accordingly.

## II. Concurrent Declarations.

As there are matters pertaining to the interests of the Church, which will manifestly require adjustment when the reunion shall have been accomplished, and concerning which it is highly desirable that there shall be a previous good understanding, the two Assem-

blies agree to adopt the following concurrent declarations, as in their judgment proper and equitable arrangements and agreements:

1. In adopting the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, as a Basis of Union, it is mutually recognized that such agreement now  
55 exists between the systems of doctrine contained in the Confessions of Faith of the two Churches as to warrant this union—a union honoring alike to both. Mutual acknowledgment also is made of the teaching and defense of essential evangelical doctrine held in common by these Churches, and of the divine favor and blessing that have made this common faith and service effectual.

It is also recognized that liberty of belief exists by virtue of the provisions of the Declaratory Statement, which is part of the Confession of Faith of the Presbyterian Church in the United States of America, and which states that "the ordination vow of ministers, ruling elders and deacons, as set forth in the Form of Government, requires the reception and adoption of the Confession of Faith, only as containing the system of doctrine taught in the Holy Scriptures." This liberty is specifically secured by the Declaratory Statement, as to Chapter III and Chapter X, Section 3, of the Confession of Faith. It is recognized also that the doctrinal deliverance contained in the Brief Statement of the Reformed Faith, adopted in 1902, by the General Assembly of the Presbyterian Church in the United States of America, "for a better understanding of our doctrinal beliefs," reveals a doctrinal agreement favorable to reunion.

2. All the ministers and churches included in the two Denominations shall be admitted to the same standing in the united Church which they may have held in their respective connections up to the consummation of the reunion.

3. The boundaries of the several Presbyteries and Synods shall be adjusted by the General Assembly of the United Church.

4. The official records of the two churches during the period of separation shall be preserved and held as making up the history of the one Church.

5. As soon as practicable after the union shall have been effected, the General Assembly shall reconstruct and consolidate the several permanent committees and boards, which now belong to the two Assemblies, so as to represent, with impartiality, the views and wishes of the two bodies constituting the reunited Church.

6. The institutions of learning, together with the endowment and other property, real and personal, owned by them, which are now under the control of the Cumberland Presbyterian Church, shall remain in charge of and be controlled by the Boards of Trustees, or other managers respectively, now in charge of such institutions, endowment and property, or by their successors similarly appointed or elected; and no greater control of such institutions, their property or affairs, shall be exercised by the General Assembly, or other ecclesiastical court or body, of the reunited Church, than is now exercised by the General Assembly, or other ecclesiastical court or body, of the Cumberland Presbyterian Church. Provided, that the governing Board of any of said institutions of learning shall be at liberty to

56 enter into such special arrangement or agreement with the ecclesiastical body controlling it, as may enable said institution to preserve its integrity and maintain its present policy. And also provided, that nothing in this declaration shall affect the relationship or control of any of the institutions of learning now connected with the General Assembly, or other ecclesiastical court or body, of the Presbyterian Church in the United States of America.

7. The corporate rights now held by the two General Assemblies and by their boards and committees, shall be consolidated and applied for their several objects as defined and permitted by law.

8. It should be regarded as the duty of all our judicatories, ministers and people, to study the things which make for peace, to guard against all needless and offensive references to the causes which have divided us, and to avoid the revival of past issues.

### III. Recommendations.

1. It is recommended that such a change be made in the Form of Government of the Presbyterian Church in the United States of America, as will allow additional or separate Presbyteries and Synods to be organized in exceptional cases, wholly or in part, within the territorial bounds of existing Presbyteries or Synods respectively, for a particular race or nationality, if desired by such race or nationality.

2. The foregoing Basis of Union and eight Concurrent Declarations shall be submitted to the respective General Assemblies of 1904, and the above Recommendation, numbered 1, shall be submitted to the General Assembly of the Presbyterian Church in the United States of America, meeting in 1904; and this entire plan of union shall be operative when said Basis of Union, Concurrent Declarations, and Recommendation numbered 1, shall have been adopted in their entirety, and where necessary by presbyterial action.

3. That the blessing of the great Head of the Church may rest upon the results of our efforts for reunion and union, it is earnestly recommended to the congregations throughout both branches of the Church, that they observe Sabbath, September 18th, 1904, as a day of fervent and united prayer to Almighty God, that He would grant unto us all "the spirit of counsel and might, the spirit of knowledge and of the fear of the Lord," and in the new relation now contemplated, enable us to keep "the unity of the spirit in the bond of peace."

W. H. BLACK.  
R. M. TINNON.  
IRA LANDRITH.  
E. E. BEARD.  
S. M. TEMPLETON.  
M. B. TEMPLETON.  
B. P. FULLERTON.  
W. E. SETTLE.  
D. E. BUSHNELL.  
A. E. TURNER.  
W. J. DARBY.

B. G. MITCHELL.  
W. H. ROBERTS.  
CHAS. A. DICKEY.  
ROBERT F. COYLE.  
REUBEN H. HARTLEY.  
DOUGLAS G. PUTNAM.  
REUBEN TYLER.  
E. S. WELLS.  
WM. N. PAGE.  
WILTON M. SMITH.

In conclusion, we unite heartily and prayerfully in the recommendation that the "Joint Report on Union" be adopted and its provisions carried out with an eye single to the glory of God.

Faternally and obediently submitted,

WM. H. BLACK, *Chm.*

JAMES M. HUBBERT, *Sec.*

After the reading of the foregoing report, Dr. S. M. Templeton moved the adoption of the following paper, and the motion was duly seconded, whereupon it was unanimously agreed that the discussion of this paper be made the special order for next Tuesday morning at 10 o'clock.

Resolved, 1, That the foregoing Report and Supplemental Report of the Committee on Presbyterian Fraternity and Union, appointed by the General Assembly in 1903, be received and spread upon the minutes of this General Assembly, and that the included Joint Report on Union be adopted; and that the Basis of Union be and is recommended to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval.

Resolved, 2, That the Moderator and the Stated Clerk be instructed to submit the Basis of Union, contained in said report to the Presbyteries of the Cumberland Presbyterian Church, in the usual constitutional manner, upon receiving official notification of the adoption of the said Joint Report on Union by the General Assembly of the Presbyterian Church in the United States of America.

#### Roll-call and the Vote on Organic Union.

On the calling of the roll, the yeas and nays having been called for, the vote on Dr. Templeton's paper offered on last Friday forenoon (see page 30), *the vote* was as follows:

On the proposition to submit and recommend the Plan of Union and Reunion to the Presbyteries, 236 votes were cast, of which two-thirds, or 158 votes, were necessary to carry the measure. As will be seen from the foregoing exhibit, the total affirmative vote was 162, and the total negative vote was 74, therefore the Moderator announced that the measure had been carried, by four votes more than was required by the Constitution.

#### *Supplemental Matter Relating to Organic Union, Published in the Minutes of the General Assembly of the C. P. Church for 1904.*

For information, in the consideration of the Plan of Reunion and Union, submitted to the Presbyteries by the General Assembly the following matter is added. (For Report of Committee on Fraternity and Union, see page 55a; for Supplemental Report of same committee, see page 25; for Assembly's action on proposition to submit the Plan to the Presbyteries, see pages 30, 44.)



*The Revised Westminster Confession.*

## Amendments of 1903.

(Referred to in "Concurrent Declarations," page 63*a*.)

## I. The Changed Sections.

"In addition to the new chapters and the Declaratory Statement, the following changes in the Confession of Faith have been made, viz:

"1. Footnotes have been appended to Chapter III. and to Chapter X., Section III., reading, "See Declaratory Statement, p. 138*b*."

"2. Chapter XVI., Section VII., has been changed so as to read:

"VII. Works done by unregenerate men, although for the matter of them they may be things which God commands, and in themselves praiseworthy and useful, and although the neglect of such things is sinful and displeasing unto God; yet, because they proceed not from a heart purified by faith; nor are done in a right manner, according to his Word; nor to a right end, the glory of God; they come short of what God requires and do not make any man meet to receive the grace of God.

"3. Chapter XXII., Section III., has been amended by striking out the last sentence, viz.: 'Yet it is a sin to refuse an oath touching anything that is good and just, being imposed by lawful authority.'

"4. Chapter XXV., Section VI., has been changed so as to read:

"VI. The Lord Jesus Christ is the only head of the Church, and the claim of any man to be the vicar of Christ and the head of the church, is unscriptural, without warrant in fact, and is a usurpation dishonoring to the Lord Jesus Christ."

## II. The Declaratory Statement.

"While the ordination vow of ministers, ruling elders, and deacons, as set forth in the Form of Government, requires the reception and adoption of the Confession of Faith only as containing the System of Doctrine taught in the Holy Scriptures, nevertheless, seeing that the desire has been formally expressed for a disavowal by the Church of certain inferences drawn from statements in the Confession of Faith, and also for a declaration of certain aspects of revealed truth which appear at the present time to call for more explicit statement, therefore the Presbyterian Church in the United States of America does authoritatively declare as follows:

"First, With reference to Chapter III. of the Confession of Faith: that concerning those who are saved in Christ, the doctrine of God's eternal decree is held in harmony with the doctrine of His love to all mankind, His gift of His Son to be the propitiation for the  
59 sins of the whole world, and His readiness to bestow His saving grace on all who seek it. That concerning those who perish, the doctrine of God's eternal decree is held in harmony with the doctrine that God desires not the death of any sinner, but has

provided in Christ a salvation sufficient for all, adapted to all, and freely offered in the Gospel to all; that men are fully responsible for their treatment of God's gracious offer; that His decree hinders no man from accepting that offer; and that no man is condemned except on the ground of his sin.

"Second, With reference to Chapter X., Section 3, of the Confession of Faith, that it is not to be regarded as teaching that any who die in infancy are lost. We believe that all dying in infancy are included in the election of grace, and are regenerated and saved by Christ through the Spirit, who works when and where and how He pleases."

### III. The New Chapters.

(Added to the Westminster Confession of Faith, in 1903, as a part of the Revision.)

#### Preamble.

"Whereas, It is desirable to express more fully the doctrine of the Church concerning the Holy Spirit, Missions, and the Love of God for all men, the following chapters are added to the Confession of Faith:

#### Chapter XXXIV.—Of the Holy Spirit.

"I. The Holy Spirit, the third person in the Trinity, proceeding from the Father and the Son, of the same substance and equal in power and glory, is, together with the Father and the Son, to be believed in, loved, obeyed, and worshipped throughout all ages.

II. He is the Lord and Giver of life, everywhere present in nature, and is the source of all good thoughts, pure desires, and holy counsels in men. By Him the Prophets were moved to speak the Word of God, and all writers of the Holy Scriptures inspired to record infallibly the mind and will of God. The dispensation of the Gospel is especially committed to Him. He prepares the way for it, accompanies it with His persuasive power, and urges its message upon the reason and conscience of men, so that they who reject its merciful offer are not only without excuse, but are also guilty of resisting the Holy Spirit.

"III. The Holy Spirit, whom the Father is ever willing to give to all who ask him, is the only efficient agent in the application of redemption. He convicts men of sin, moves them to repentance, regenerates them by His grace, and persuades and enables them to embrace Jesus Christ by faith. He unites all believers to Christ, dwells in them as their Comforter and Sanctifier, gives to them the spirit of Adoption and Prayer, and performs all those gracious offices by which they are sanctified and sealed unto the day of redemption.

60 "IV. By the indwelling of the Holy Spirit all believers being vitally united to Christ, who is the Head, are thus united one to another in the Church, which is His body. He calls and anoints ministers for their holy office, qualifies all other officers in the Church for their special work, and imparts various gifts and graces to its members. He gives efficiency to the Word, and to the

ordinances of the Gospel. By Him the Church will be preserved, increased until it shall cover the earth, purified, and at last made perfectly holy in the presence of God.

### Chapter XXXV.—Of the Love of God and Missions.

"I. God, in infinite and perfect love, having provided in the covenant of grace, through the mediation and sacrifice of the Lord Jesus Christ, a way of life and salvation, sufficient for and adapted to the whole lost race of man, doth freely offer this salvation to all men in the Gospel.

"II. In the Gospel God declares His love for the world and His desire that all men should be saved, reveals fully and clearly the only way of salvation; promises eternal life to all who truly repent and believe in Christ; invites and commands all to embrace the offered mercy; and by His spirit accompanying the Word pleads with men to accept His gracious invitation.

"III. It is the duty and privilege of every one who hears the Gospel immediately to accept its merciful provisions; and they who continue in impenitence and unbelief incur aggravated guilt and perish by their own fault.

"IV. Since there is no other way of salvation than that revealed in the Gospel, and since in the divinely established and ordinary method of grace faith cometh by hearing the Word of God, Christ hath commissioned His Church to go into all the world and to make disciples of all nations. All believers are, therefore, under obligation to sustain the ordinances of religion where they are already established, and to contribute by their prayers, gifts, and personal efforts, to the extension of the kingdom of Christ throughout the whole earth."

### *Brief Statement of the Reformed Faith.*

Not a Part of the Confession of Faith, but Adopted by the General Assembly of the Presbyterian Church, U. S. A., "To Instruct the People and to give a Better Understanding of Our Doctrinal Beliefs."

(Referred to in Concurrent "Declarations," page 63a.)

### "Article I.—Of God.

"We believe in the ever-living God, who is a Spirit and the Father of our spirits; infinite, eternal, and unchangeable in His being and perfection; the Lord Almighty, most just in all His ways, 61 most glorious in holiness, unsearchable in wisdom and plentiful in mercy, full of love and compassion, and abundant in goodness and truth. We worship Him, Father, Son, and Holy Spirit, three persons in one Godhead, one in substance and equal in power and glory.

"Article II.—Of Revelation.

"We believe that God is revealed in nature, in history, and in the heart of man; that he has made gracious and clearer revelations of Himself to men of God who spoke as they were moved by the Holy Spirit; and that Jesus Christ, the Word made flesh, is the brightness of the Father's glory and the express image of His person. We gratefully receive the Holy Scriptures, given by inspiration to be the faithful record of God's gracious revelations and the sure witness to Christ, as the Word of God, the only infallible rule of faith and life.

"Article III.—Of the Eternal Purpose.

"We believe that the eternal, wise, holy, and loving purpose of God embraces all events, so that while the freedom of man is not taken away nor is God the author of sin, yet in His providence He makes all things work together in the fulfillment of His sovereign design and the manifestation of His glory; wherefore, humbly acknowledging the mystery of this truth, we trust in His protecting care and set our hearts to do His will.

"Article IV.—Of the Creation.

"We believe that God is the Creator, upholder, and governor of all things; that He is above all His works and in them all; and that He made man in His own image, meet for fellowship with Him, free and able to choose between good and evil, and forever responsible to his Maker and Lord.

"Article V.—Of the Sin of Man.

"We believe that our first parents, being tempted, chose evil, and so fell away from God and came under the power of sin, the penalty of which is eternal death; and we confess that, by reason of this disobedience, we and all men are born with a sinful nature, that we have broken God's law, and that no man can be saved but by His grace.

"Article VI.—Of the Grace of God.

"We believe that God, out of His great love for the world, has given His only begotten Son to be the Savior of sinners, and in the Gospel freely offers His all-sufficient salvation to all men. And we praise Him for the unspeakable grace wherein He has provided a way for eternal life for all mankind.

"Article VII.—Of Election.

"We believe that God, from the beginning, in His own good pleasure, gave to His Son a people, an innumerable multitude, chosen in Christ unto holiness, service, and salvation; we believe that all who come to years of discretion can receive this salvation only through faith and repentance; and we believe that all who die in infancy, and all others given by the Father

to the Son who are beyond the reach of the outward means of grace, are regenerated and saved by Christ through the Spirit, who works when and where and how He pleases.

**"Article VIII.—Of Our Lord Jesus Christ.**

"We believe in and confess the Lord Jesus Christ, the only Mediator between God and man, who, being the Eternal Son of God, for us men and for our salvation became truly man, being conceived by the Holy Ghost and born of the Virgin Mary, without sin; unto us He has revealed the Father, by His Word and Spirit making known the perfect will of God; for us He fulfilled all righteousness and satisfied eternal justice, offering himself a perfect sacrifice upon the cross to take away the sin of the world; for us He rose from the dead and ascended into heaven, where He ever intercedes for us; in our hearts, joined to Him by faith, He abides forever as the indwelling Christ; over us, and over all for us, He rules: wherefore, unto Him we render love, obedience, and adoration as our Prophet, Priest and King forever.

**"Article IX.—Of Faith and Repentance.**

"We believe that God pardons our sins and accepts us as righteous solely on the ground of perfect obedience and sacrifice of Christ, received by faith alone; and that this saving faith is always accompanied by repentance, wherein we confess and forsake our sins with full purpose of, and endeavor after, a new obedience to God.

**"Article X.—Of the Holy Spirit.**

"We believe in the Holy Spirit, the Lord and Giver of Life, who moves everywhere upon the hearts of men, to restrain them from evil and to incite them unto good, and whom the Father is ever willing to give unto all who ask Him. We believe that He has spoken by holy men of God in making known His truth to men for their salvation; that, through our exalted Savior, He was sent forth in power to convict the world of sin, to enlighten men's minds in the knowledge of Christ, and to persuade and enable them to obey the call of the Gospel; and that he abides with the Church; dwelling in every believer as the spirit of truth, of holiness, and of comfort.

**"Article XI.—Of the New Birth and the New Life.**

"We believe that the Holy Spirit only is the author and source of the new birth; we rejoice in the new life, wherein He is given unto us as the seal of sonship in Christ, and keeps loving fellowship with us, helps us in our infirmities, purges us from our faults, and ever continues His transforming work in us until we are perfect in the likeness of Christ, in the glory of the life to come.

63 **"Article XII.—Of the Resurrection and the Life to Come.**

"We believe that in the life to come the spirits of the just, at death made free from sin, enjoy immediate communion with God and the

vision of His glory; and we confidently look for the general resurrection in the last day, when the bodies of those who sleep in Christ shall be fashioned in the likeness of the glorious body of their Lord, with whom they shall live and reign forever.

“Article XIII.—Of the Law of God.

“We believe that the law of God, revealed in the Ten Commandments, and more clearly disclosed in the words of Christ, is forever established in truth and equity, so that no human work shall abide except it be built on this foundation. We believe that God requires of every man to do justly, to love mercy, and to walk humbly with his God; and that only through this harmony with the will of God shall be fulfilled that brotherhood of man wherein the kingdom of God is to be made manifest.

“Article XIV.—Of the Church and the Sacraments.

“We believe in the Holy Catholic Church, of which Christ is the only Head. We believe that the Church Invisible consists of all the redeemed, and that the Church Visible embraces all who profess the true religion together with their children. We receive to our communion all who confess and obey Christ as their divine Lord and Savior, and we hold fellowship with all believers in Him.

“We receive the sacraments of Baptism and the Lord's Supper, alone divinely established and committed to the Church, together with the Word, as means of grace; made effectual only by the Holy Spirit, and always to be used by Christians with prayer and praise to God.

“Article XV.—Of the Last Judgment.

“We believe that the Lord Jesus Christ will come again in glorious majesty to judge the world and make a final separation between the righteous and the wicked. The wicked shall receive the eternal award of their sins, and the Lord will manifest the glory of His mercy in the salvation of His people and their entrance upon the full enjoyment of eternal life.

“Article XVI.—Of Christian Service and the Final Triumph.

“We believe that it is our duty, as servants and friends of Christ, to do good unto all men, to maintain the public and private worship of God, to hallow the Lord's Day, to preserve the sanctity of the family, to uphold the just authority of the state, and so to live in all honesty, purity, and charity that our lives shall testify to Christ. We joyfully receive the word of Christ bidding His people go into all the world and make disciples of all nations, and declare unto them that God was in Christ reconciling the world unto Himself, and that He will have all men to be saved and to come to the knowledge of the truth. We confidently trust that by His power

64 and grace all His enemies and ours shall be finally overcome, and the kingdoms of this world shall be made the kingdom

of God and of His Christ. In this faith we abide; in this service we labor; and in this hope we pray,

"Even so, come, Lord Jesus.

"Attest:

"HENRY VAN DYKE,

"*Moderator General Assembly, 1902.*

"W. H. ROBERTS,

"*Stated Clerk.*"

J. M. HUBBERT, S. C.

11. *Minutes of the Genral Assembly of the Cumberland Presbyterian Church for the Year 1905.*

Report of Special Committee on Organic Union.

It was then announced that the Special Committee on Organic Union was ready to report, the Chairman, Dr. S. M. Templeton, stating that two reports would be submitted, one by the majority and the other by the minority, whereupon the Stated Clerk read the following Majority and Minority Reports of said Committee:

Majority Report of Special Committee on Organic Union.

To the General Assembly:

Your Special Committee appointed to canvass the vote of the Presbyteries upon the question of the approval or disapproval of the Union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, respectfully report:

There have been turned over to us statements from 113 of the 114 Presbyteries in the Church, there being no statement from the Florida Presbytery, which, we understand, for a lack of a quorum, had no meeting, and did not vote on the question. With the exception of the Cookeville and Ozark Presbyteries, the returns were made in the following form:

Certificate of Vote on Organic Union.

I hereby certify that the — Presbytery, in the — Synod, of the Cumberland Presbyterian Church, in session at — —, 190—, did, in the Constitutional manner, give consideration to the proposition submitted to the Presbyteries by the General Assembly, pertaining to the Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, and took action thereon, and that the Presbytery, by a majority vote, expressed its\* — of said Basis of Union.

Signed by

\_\_\_\_\_,  
*Stated Clerk of the Presbytery.*

† — —, 190—.

\* State here whether approval or disapproval.

† Date when certificate was filled out.



65 Upon canvassing these returns we find that sixty (60) Presbyteries voted for approval of the Reunion and Union of said two Churches, as follows:

\* \* \* \* \*

We find that fifty-one (51) Presbyteries voted disapproval of the same, as follows:

\* \* \* \* \*

We also find two (2) Presbyteries not voting: the Florida Presbytery not reporting, and the Ozark Presbytery reporting having voted against approval, and then reconsidered its vote on Union and laid the Union matter on the table indefinitely.

We submit herewith a paper adopted by the Cookeville Presbytery, showing the action of that Presbytery (see Exhibit A), and that the said Cookeville Presbytery voted for Union conditionally. For this reason, it is not counted as having voted for the approval of the Reunion and Union.

We also submit a tabulated statement of the vote of Ministers and Elders in each Presbytery, on the Union question, as fully as the same is shown by the supplemental returns gathered by the Assembly's Stated Clerk. (See Exhibit B.)

### Conclusion.

There being one hundred and fourteen (114) Presbyteries in the Church we find and declare that more than a constitutional majority of the whole number of Presbyteries in the Church have voted in favor of the Reunion and Union, and we therefore recommend that you adopt the following Preamble and Resolutions:

Whereas, The General Assembly of the Presbyterian Church in the U. S. A., which met in 1903, and the General Assembly of the Cumberland Presbyterian Church, which convened in the same year, each appointed a Committee looking to a union of the said two Churches, and,

Whereas, Said Committees, after conferring with each other, agreed upon a plan, or basis, of reunion and union of said Churches, and, by a joint report, presented the same to their respective General Assemblies which convened in 1904, and recommended its adoption, and,

Whereas, The General Assembly of the Cumberland Presbyterian Church of 1904, by the Constitutional two-thirds vote, adopted said joint report, including the plan, or basis, of Union therein contained, and recommended and submitted said basis of Union to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval; and,

Whereas, Each one of the one hundred and fourteen (114) Presbyteries of the Church, except Florida, did, before the tenth day of May, 1905, forward to the Stated Clerk of this General Assembly a statement of its action on said basis of Union, which statements have been submitted by the Stated Clerk to this Assembly; and,

Whereas, It appears from said statements, or reports, that sixty (60) of said Presbyteries have approved of the reunion and union of

66 the Presbyterian Church in the U. S. A. and the Cumberland Presbyterian Church, upon the basis set forth in said joint report, and that fifty-one (51) Presbyteries have voted disapproval of said reunion and union, one (1) Presbytery approving conditionally, two (2) Presbyteries failing to take any final action on the question; therefore,

Be it Resolved, That this General Assembly does hereby find and declare that a constitutional majority of the Presbyteries of the Cumberland Presbyterian Church have voted approval of the reunion and union of said Churches upon the basis set forth in said joint report, and does find and declare that said reunion and union has been constitutionally agreed to by the Cumberland Presbyterian Church, and that the said basis of Union has, for the purposes of the Union, been constitutionally adopted.

Respectfully submitted,

S. M. TEMPLETON, *Chairman.*

E. E. BEARD.

T. A. WIGGINTON.

### Minority Report of Special Committee on Organic Union.

To the General Assembly:

We, a minority of the Special Committee appointed to make a finding as to the submission of the question of union between the Cumberland Presbyterian Church and the Presbyterian Church, United States of America, and as to the action of the Presbyteries on said question, respectfully report as follows:

1. As to submission. The Moderator and the Stated Clerk of the Assembly submitted the said question to the Presbyteries in the following form: (See form and copy, Exhibit 1, page 43.)

It is our opinion, (1), That there is no power given the General Assembly by the Constitution of the Cumberland Presbyterian Church to negotiate, enter into, or confirm such union as is proposed, and was submitted by the Moderator and Clerk of our Assembly.

(2) That such action is contrary to, and in violation of, the provision and spirit of the Constitution of the Cumberland Presbyterian Church, and such action is without authority and void.

2. As to the returns from Presbyteries. We have received and examined certificates from the stated clerks, from 113 of the 114 Presbyteries in the Church, there being no certificate from Florida Presbytery, which, we are advised, took no action on the question. Upon canvass of the returns we find that sixty (60) Presbyteries voted for approval and fifty-one (51) Presbyteries voted against approval.

Cookeville Presbytery passed a resolution favoring union, conditionally, but postponed final action. (See resolution, Exhibit No. 2.)

[This is given, as "Exhibit A." in the Majority Report, which see on page 39.—J. M. H., *Stated Clerk.*]

Ozark Presbytery voted against approval as follows: 24 against

and 15 for approval, but reconsidered its action and left Presbytery without final action on the question.

Of the remaining 111 Presbyteries, we find that sixty voted  
67 for approval and fifty-one for disapproval, and refer to tabulated statement herewith submitted, showing names and vote of each Presbytery. (Exhibit 3.)

[This exhibit is the same as "Exhibit B," in the Majority Report, which see on page 40.]

The summary of the vote shows that 691 ministers voted for approval and 649 elders voted for —, making total of 1,340 for approval. Also that 470 ministers and 1007 elders voted against approval, making total of 1,477 against approval.

Little Rock Presbytery reported eight for approval and four against approval, but does not give the ministerial and elders' vote, but we divided it equally, which makes the same result. This shows a majority of 137 ministers and elders of the Presbyterial vote against approval.

We dissent from (or object to) the resolution presented in the Majority Report, which says that "reunion and union has been constitutionally agreed to by the Cumberland Presbyterian Church, and that this basis of union has for the purposes of union been constitutionally adopted," and insist that such action was without authority of the Constitution and that our standards have not been changed as provided by our laws. The standards provided in proposed basis of reunion and union have not been adopted as provided in the constitution of the Cumberland Presbyterian Church. Union cannot be consummated, because the amendment to the law of the Presbyterian Church, which was agreed in the joint report should be made, allowing separate Presbyteries, has not been proposed to, nor adopted by, the Presbyteries in the Presbyterian Church.

The joint report provided for an amendment allowing separate Presbyteries "for a particular race or nationality, if desired by such race or nationality." The amendment on this subject, proposed by the Presbyterian Church, allows separate Presbyteries, "in the interests of ministers and churches speaking other than the English language, or of those of a particular race; but in no case without their consent." These two provisions are different and show that the Presbyterian Church has not carried out the agreement embodied in the joint report.

The Presbyterian Assembly has not unqualifiedly agreed to the proposed union, but has reserved the right to refuse to go into the union, and agreeing only to go in if to them the "way be clear."

Respectfully submitted,

J. J. McCLELLAN.  
W. B. YOUNG.

*Exhibits Referred to in the Foregoing Report.*

## EXHIBIT I.

(Referred to on Page 42.)

## Presbyterial Vote on Organic Union.

To the — Presbytery.

DEAR BRETHREN: By referring to the Minutes of the last meeting of the General Assembly (Pages 25, 55a, 30, 44, 48), you will see that, in the constitutional manner, the Assembly has submitted to the Presbyteries a proposition pertaining to the Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, and you are asked to give due consideration to the same and to vote thereon. This proposition is to be put before the Presbytery in the following terms:

"Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards, and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice?"

To this question the Presbytery is to give categorical answer. While the vote is taken simply upon this question, your action thereon will mean the acceptance or rejection of the entire Plan, embracing the Basis of Union, Concurrent Declarations, and Recommendations, without amendment or alteration in any part. (See Minutes, pages 62a-65a.)

For the information of the Presbyteries, the Amendments to the Westminster Confession of Faith and the Brief Statement of the Reformed Faith have been printed in the Assembly Minutes. (See pages 72-77.)

The vote of the Presbytery is to be taken on or before April 30, 1905, and the accompanying certificate of the vote is to be returned to the Assembly's Stated Clerk before the tenth of May, 1905.

W. E. SETTLE,

*Moderator.*

J. M. HUBBERT,

*Stated Clerk.*

Marshall, Mo., September 6, 1904.

The Moderator then announced and declared that the motion to adopt the Majority Report had prevailed, there being 137 votes in the affirmative, and 110 votes in the negative, and that the Resolution contained therein had constitutionally become the action of the General Assembly. (See pages 37-39.)

Notice was then given by Elder J. J. McClellan that a protest would be duly filed by the minority.

### Protest to the Union Movement.

Elder J. J. McClellan requested that the following Protest, with signatures attached, should be spread upon the Minutes, which request was granted by the Assembly:

To the General Assembly of the Cumberland Presbyterian Church in session in Fresno, California, May, 1905:

We, the undersigned members of the Cumberland Presbyterian Church, and duly commissioned and enrolled members of  
69 your body, do hereby most respectfully beg to submit our emphatic protest to the majority action of your body, in reference to the proposed organic unification of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, for the following reasons, to wit:

1. The system of doctrine taught in the confession of faith in the Cumberland Presbyterian Church, in its pure and simple statements, is in happy and harmonious response to our convictions of the doctrines of the Holy Scriptures.

2. Through nearly a century of history these doctrines have given our church a distinctive spirit of evangelization and power that easily rank it among the leading and most effective organizations for advancing and enlarging the Kingdom of Christ.

3. Our doctrine is distinctively "via media" between the doctrines of Calvinism and Arminianism, and no character of interpretation or amount of reconstruction can bring one into harmony with the other.

4. The confession of faith of the Cumberland Presbyterian Church and the entire ninety-five years of history of the church are protestant to the doctrines explicitly expressed and taught in the Westminster confession, the confessional statement of doctrines upon which it is proposed that this union shall be effected.

5. The confessional revision of 1903 of the Presbyterian Church in the United States of America does not amend, revise, or eliminate those doctrines to which ours has stood as an unyielding protest. Not a word or line of those objectionable chapters, sections or text has been changed, modified or eliminated.

6. The declaratory statement is not revisional in either intent or effect upon the doctrines of decrees and fatality as expressed and taught in the Westminster confession. The legal and logical effect of the declaratory statement is a reaffirmation of these doctrines.

7. The plan or basis of this union is not in its legal and logical effect a union of the two churches. Its consummation would be purely and simply the merging of the membership of our communion into the other communion and the conveyance of all our property assets into that communion. Our history, name and confessional doctrines are extinguished in the consummation of the plan.

8. The action of the Assembly at Nashville, Tennessee, May, 1903,

in appointing the Committee on Fraternity and Union was either without constitutional warranty or that committee has exercised prerogatives not contemplated by the Assembly as a whole.

9. The action of the General Assembly at Dallas, Texas, May, 1904, in the effort to adopt and submit the joint report of the Committee on Fraternity and Union to the presbyteries for action was both irregular and without constitutional authority. The effect of the plan, or basis, of union contemplates the adoption of the confession of faith and ecclesiastical standards of the Presbyterian Church in the United States of America by our presbyteries, or church. The constitutional provision or an action of this character was not followed in the general reference.

70 10. A change of three votes from the negative to the affirmative side at the Dallas Assembly would have defeated the reference to the presbyteries. At least twelve members of that Assembly, whose names can be secured and given, voted for a reference, or submission, to the presbyteries under a misapprehension of their real official relation to such an act or its legal purport. In other words, under a full and fair understanding of their official relation to such an action, or apprehension of its real purport, at least twelve votes would have been cast negatively that were cast affirmatively, defeating the union proposition.

11. There is no constitutional provision for the dissolution of our church organization or merging it into a communion having and holding different doctrines. It is only expressly provided to receive into our communion other ecclesiastical bodies whose doctrines and systems of government conform of ours.

12. No action has been taken by our Assembly looking to the adoption of the form of government, rules of discipline, and directory of worship of the church with which it is proposed that we unite, as provided in second paragraph of Section 60 of our Constitution.

13. The provision adopted by the Presbyterian Church in the United States of America for the organization of separate presbyteries and synods is radically and materially different in its processes from the one proposed by the joint committee on Fraternity and Union and incorporated in its official report. In other words, it is not the provision upon which our presbyteries have voted.

14. The past twelve months of discussion has clearly developed the fact that our church is neither ready for, nor willing to enter into, a union on the basis, or plan, proposed. The movement was confessedly premature; coercive measures can only produce confusion.

15. The official returns and past statements in the public prints show that the other church is far from being a unit in confirming the proposed organic union. This opposition is of a character and strength that demands serious consideration. The logic of its position is in many real and vital points in harmony with the opposition in our church. It arrests the attention of considerate and reflective minds. The arbitrary exercise of authority, either legally vested or assumed, in disregard of its existence and warnings, can only have disastrous results.

16. With all these facts and conditions clearly before our minds,

an effective organic unification is utterly impracticable. It means disorder, chaos and confusion, instead of peace, prosperity and enlarged opportunities. It must bring the dangers of shame and reproach to the Kingdom of our Master, instead of the opportunity of strength and the enlargement of His domain. And in His name, and in behalf of His Kingdom, we would submit our most emphatic protest to the majority action of this Assembly in approving the proposed plan of union.

J. J. McCLELLAN,  
J. S. LISH (and 88 others).

71

## Answer to Protest.

On motion, Dr. S. M. Templeton, Dr. W. H. Black, and Elders E. E. Beard, A. R. Taylor, and A. E. Turner were appointed by the Assembly a Committee to prepare an answer to the foregoing Protest, and it was ordered that the answer to be prepared by this Committee shall be spread upon the Minutes, as the Assembly's Answer to the protest of the minority, and afterward this answer was filed with the Assembly's Stated Clerk, and is as follows:

## To the General Assembly:

Your Committee appointed and authorized to make answer to the Protest offered by certain members of your body against your action in declaring that the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church has been constitutionally agreed to by the Cumberland Presbyterian Church, and that the Basis of Union has, for the purposes of the union, been constitutionally adopted, submit the following Answer to the said Protest:

The reply, in brief, from the Assembly's point of view, is, that the harmony of our doctrines with the Holy Scripture is not questioned by the Assembly or the Church, in the action proposed and taken, and it is sheer error for the protestants to make such implication; that the same is true as to the spirit of evangelization; that it is preposterous to deny that Churches holding doctrines in some degree variant cannot, by interpretation or reconstruction, reach common ground of agreement; that it is a violent construction of the revision of 1903 to affirm that it does not amend, revise, or eliminate any doctrine, and that not a line or word of the chapters, sections, or text has been changed, modified, or eliminated; that the whole official treatment of the question of union goes to show that this transaction is a *bona fide* union of the two Churches and not a mere merger of one into the other, as the protestants affirm; that the Constitution fully warrants the changes involved by the terms of union, while, for the power to unite, our Church looks to that inherent right which lies at the foundation of all Church unions, and which right and freedom to unite is voiced by the controlling legal decisions rendered in such cases; that the essential substance of the provision for separate Synods and Presbyteries for different races has been enacted by the other Church, and the Assembly does not recognize the cavil raised upon the mere variance of the technical language employed;



that the only known legal test of the sentiments of our Church and the other Church, on union, proves that the two Churches are ready for union, by the token that both Churches have approved the terms of union in a legal and constitutional manner; that the Assembly does not enter into the dire predictions of the protestants, but looks hopefully into the future, cherishing faith in the character of our people for abiding the decisions of their Church, and in the power of adhesion among us which has heretofore stood every test; and, finally, that almost every count in the sixteen reasons assigned has been thrice adjudicated, having been pleaded in the Assembly at Dallas, in the general discussion attending the voting of the Presbyteries, and again in the Assembly at Fresno, and therefore, all have had their day in court, and all have, in each several hearing, been overruled as to their adverse hearing on the question of this union.

#### Doctrinal Agreement.

The absolute denial of the protestants that the revision has had any effect whatever on the meaning and purport of the Confession, is so radical and extreme that the protestants enjoy the distinction of being alone in such an assertion. They have not the company of a single corroborating witness even of individual opinion, since the most radical individual opponents of both revision and union, in the other Church, do not go so far in their denials.

The simple fact about the revision of 1903 is, that, not being a verbal or textual revision, it is an error to test it by the changes made or not made in the original text. That revision was made, not by rewriting the original text or by striking out words and inserting others in their stead, but by authoritatively and more clearly and more explicitly expressing the mind of the Church at this time. The governing force in this revision is not the exact and technical meaning of the unrevised Confession, but the present-day beliefs of the living Church. It is the unquestioned legal and moral right of the Church to alter or amend its doctrinal statements, and there is no restraint upon this right by reason of its former doctrinal symbols. It is only a question of fact as to the extent of the revision. Every lawyer is familiar with the amendment of statutes, not alone by textual revision, but also by later legislation, which always has the effect of superseding former laws wherever there is a conflict in the meaning. Every minister and Bible student must know how to interpret changes of ordinances and dispensations, not by means of a textual revision of the Old Testament laws and ceremonies, but by means of later revelations and enactments in the New Testament. The protestants have not the power to enact that nothing is revision except textual and verbal revision.

The revision is to be construed by the spirit as well as by the letter. The recognized reason leading to the revision is shown in the Presbyterian Assembly Minutes of 1901, page 105, as follows:

"These returns (of Presbyteries) indicate that it is the mind of the Church that the Confession shall be interpreted throughout in harmony with the teaching of Scripture that God is not willing that

any one should perish, nor is it the decree of God, but the wickedness of their own hearts which shuts some men out from the salvation freely and lovingly offered in Christ Jesus to all sinners. \* \* \*

"That this Committee be instructed to prepare amendments of Chapter III; Chapter X, Section 3; Chapter XVI, Section 7; Chapter XXII, Section 3; Chapter XXV, Section 6, of our Confession of Faith, either by modification of the text or by Declaratory Statement, but so far as possible by Declaratory Statement, so as more clearly to express the mind of the Church, with additional statements concerning the love of God for all men, Missions and the Holy Spirit. It being understood that the revision shall in no way impair the integrity of the system of doctrine set forth in our Confession and taught in the Holy Scripture."

Two methods of revision were, therefore, employed in this case.

1. By Declaratory Statement, similar in effect to a declaratory statute in civil law, to make plain the meaning and intention of the law-making power. The purpose of this Declaratory Statement is further shown in its own preamble, as follows:

"Seeing that the desire has been formally expressed for a disavowal by the Church of certain inferences drawn from statements in the Confession of Faith, and also for a declaration of certain aspects of revealed truth which appear at the present time to call for more explicit statement \* \* \*"

2. By adding the new Chapters XXXIV and XXXV, for the reason assigned in the preamble thereto,

"It is desirable to express more fully the doctrine of the Church concerning the Holy Spirit, Missions and the love of God for all men."

The Declaratory Statement and the new Chapters XXXIV and XXXV, in their setting in the Revised Confession, and also the Joint Report on Union adopted in 1904, are hereby cited as official documents evidencing the now existing doctrinal agreement between the two Churches.

Especially pertinent are the following extracts from the said Joint Report:

From the Plan of Reunion and Union of the Churches:

"We believe that the union of Christian Churches of substantially similar faith and polity would be to the glory of God, the good of mankind, and the strengthening of Christian testimony at home and abroad.

"We believe that the manifest providential developments and leadings of the two Churches since their separation, together with present conditions of agreement and fellowship, have been and are such as to justify this reunion."

See also Concurrent Declaration No. 1:

"In adopting the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, as a Basis of Union, it is mutually recognized that such agreement now exists between the systems of doctrine contained in the Confessions of Faith of the two Churches as to warrant this union—a union alike honoring to both. Mutual acknowledgment also is made of the teaching

and defence of essential evangelical doctrine held in common by these Churches, and of the divine favor and blessing that have made this common faith and service effectual.

"It is also recognized that liberty of belief exists by virtue of the provisions of the Declaratory Statement, which is part of the Confession of Faith of the Presbyterian Church in the United States of America, and which states that 'the ordination vow of ministers, ruling elders and deacons; as set forth in the Form of Government, requires the reception and adoption of the Confession of Faith, only as containing the system of doctrine taught in the Holy Scriptures.' This liberty is specifically secured by the Declaratory Statement, as to Chapter III and Chapter X, Section 3, of the Confession of Faith. It is recognized also that the doctrinal deliverance contained in the Brief Statement of the Reformed Faith, adopted in 1902, by the General Assembly of the Presbyterian Church in the United States of America, 'for a better understanding of our doctrinal beliefs,' reveals a doctrinal agreement favorable to reunion."

Thus both Churches officially declare the doctrinal agreement between them, the doctrinal honor with which both enter the union, and the broad liberty in doctrine, which assures us against embarrassment, humiliation, or oppression on doctrinal grounds in the union. This declaration was deliberately and authoritatively adopted by both Assemblies, after being contested in both bodies by those in opposition. It has the greater authority, therefore, by its not having been adopted inadvertently or hastily. In the Buffalo Assembly a dissent came from two members of the Committee on Church Co-operation and Union, denying that such agreement exists. This dissent, as well as able opinions expressed in debate to the same effect, was overruled in the Assembly by the adoption of the report, by an almost unanimous vote. There followed a protest by certain members of that Assembly, reiterating the denial of such existing doctrinal agreement. The following is quoted from the Assembly's answer to that protest:

"1. The protest is made, 'first and chiefly, because the Plan of Union in its first Concurrent Declaration involves an interpretation of the doctrinal Standards of the Church.' The protestants 'feel that the Constitutional right of the Assembly to make this interpretation is open to grave question.' Your Committee would answer that this protest asserts in effect that the supreme court of the Church is not competent to interpret its doctrinal Standards. This mere statement is of itself sufficient answer to the protestants. It is not only the right, but the duty of the General Assembly.

"2. The protestants assert that 'the two systems of doctrine' contained respectively in the Confessions of Faith of the Cumberland Presbyterian Church and our own Church 'are antagonistic to each other, especially in the instance of the doctrine of divine decrees.' This is simply a difference of opinion. The deliberations of the Assembly involved the judgment of the commissioners as to this very matter. The overwhelming vote of the Assembly in adopting the Report of the Committee indicated that the Assembly as a body does not agree with the protestants." Buffalo Minutes, 1904, page 175.

The contention against the existence of doctrinal agreement was carried before their Presbyteries, with the result that 194 Presbyteries approved the Basis of Union, while only 39 disapproved, thus again preponderantly overruling this contention in that Church, so much so that without a dissenting voice its recent Assembly announced the approval of union.

In our own Church the declaration of this doctrinal agreement was earnestly contested before the Dallas Assembly, and the Presbyteries, and the objects were overruled by that Assembly and by a constitutional majority of the Presbyteries. The same contention has again been overruled by this Assembly.

Therefore, with all due recognition of individual liberty and freedom of opinion, it is no longer an open question as to what is the official and authoritative voice of the two Churches as to the  
 75 sufficient doctrinal agreement to warrant this union, honoring alike to both, and upon the very terms stipulated. It should be borne in mind that individual liberty of opinion cannot set itself up to restrain the liberties of religious bodies. It should be also recognized, that when a Church has declared itself, in accordance with its own laws and organism, on any question over which it has jurisdiction, there is the element of authority in its action that commands the fealty of its members and the respect of the civil authorities. It should further be recognized, that the action of a majority is the action of the body, and is as binding, in its legal effects, upon those participating in and voting against any measure as it is upon those who vote for it. Minorities have certain rights and are entitled to certain consideration, but these rights do not involve the power to control the majority beyond the restraints imposed by the organic law of the Church. The law of the Church vests the weight and prestige of its authority in the majority, and it does not vest any authority in the minority on any question.

#### Finality of Constitutional Authority.

In their ninth assignment, the protestants assert: "The effect of the plan, or basis, of union contemplates the adoption of the confession of faith and ecclesiastical standards of the Presbyterian Church in the United States of America, by our presbyteries, or church." This is a valuable admission on the part of the protestants, going to corroborate the very position of this Assembly, that the adoption of the said Confession of Faith and Government of said Church was intended, and was accomplished in what has been done by our Church, and that this was fully understood, pending action thereon. The designation of "its other doctrinal and ecclesiastical standards," in the Basis of Union, is sufficiently explicit to make it certain that the doctrinal and governmental instruments contained in the Constitution of the Presbyterian Church, in the U. S. A., were meant. The Standard Dictionary defines the word "ecclesiastical" as follows: "Of or pertaining to the Church, especially considered as an organized or governing power; as, ecclesiastical architecture; ecclesiastical polity or control." The claim of the protestants that the action of the Dallas Assembly in this regard was "both irregular and without

constitutional authority," and that "the constitutional provision for an action of this character was not followed in the general reference," has all been pleaded before the Church, pending presbyterial action, and before this Assembly, and has all been overruled. The protestants have, in law, waived such irregularity of reference by participating in Presbyteries and in this Assembly, in action thereon, and are thereby estopped now from pleading such irregularities, if there were any; but the Assembly denies that any such irregularity or unconstitutionality exists.

The power to determine whether the doctrine and system of government of any ecclesiastical body is sufficient in conformity with our own to warrant an incorporation into the same organization, belonging to the courts of the Church by prescribed majority action, and this power does not belong to dissenting or protesting minorities. By such majorities the courts of our Church have decided that such agreement exists as to warrant this union. The supreme court of Pennsylvania has held that "union among Churches is a perfectly legitimate part of their purpose and their freedom, and mutual concession is part of the natural law of it and we cannot direct or limit it;" that the right of Churches to unite had been recognized in Europe and America since 1758; that of the terms of union "the Presbyteries and Synods were the constitutional judges;" that the Church did not forfeit the right of property by its credal and governmental changes or change in name; and that the party recognizing the union could hold the property as against the party renouncing it. *Watson vs. McGinnis*, 41 Penn., 9.

For its conclusive weight of authority, establishing the supremacy of Church courts in their own jurisdiction, quotation is here made from the United States Supreme Court, in the celebrated case of *Watson vs. Jones*, 13 Wallace, 769:

"Where the subject matter of dispute is strictly and purely ecclesiastical in its character, a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them, and the ecclesiastical courts claim jurisdiction, the civil courts will not assume jurisdiction; they will not even inquire into the right of jurisdiction of the ecclesiastical court."

"In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations, to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent, and would lead to the total subversion

of such religious bodies, if any one aggrieved by one of their decisions should appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that these decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

The Court quotes with approval the following from State Courts:

South Carolina. "It belongs not to the civil power to enter into or review the proceedings of a spiritual court. The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority." "When a civil right depends upon an ecclesiastical

77 matter, it is the civil court, and not the ecclesiastical, which is to decide. But the civil tribunal tries the civil right and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them."

Illinois. "The judicial eye cannot penetrate the veil of the Church for the forbidden purpose of vindicating the alleged wrongs of ex-cised members; when they became members, they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power, and cannot now invoke the supervisory power of the civil tribunals."

Missouri. "Held that whether a case was regularly or irregularly before the Assembly was a question which the Assembly had the right to determine for itself, and no civil court could reverse, modify or impair its action in a matter of merely ecclesiastical concern."

The court adds: "But it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, usages and customs, the written laws and fundamental organization of every religious denomination, may and must be examined into with minuteness and care, for they would become in almost every case the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, and would, in effect, transfer to the civil courts, where property rights were concerned, the decision of all ecclesiastical questions."

#### Race Provision Sufficient and in Good Faith.

"In exceptional cases a Presbytery may be organized within the boundaries of existing Presbyteries, in the interests of ministers and churches speaking other than the English language, or of those of a particular race; but in no case without their consent; and the same rule shall apply to Synods."

Our Presbyteries and this General Assembly have acted on the union question with full knowledge of the foregoing race provision, and, therefore, in effect have passed upon the merits of that issue. This Constitutional provision for separate Presbyteries and Synods



for different races is sufficient in itself, and the good faith of the other Church in adopting it will be apparent to all who will read the able report on the subject adopted by the Buffalo Assembly, and who know the mind of that branch of the Church on this question. A few extracts from that report will show that the South constitutes largely the "exceptional cases," and that it is seriously contemplated that separate Presbyteries and Synods will be formed in the interests of both races. Here are some extracts from that report:

"While they [the Negroes] have made commendable progress in this new condition, and have shown themselves worthy of the sympathy and respect of the white race, it cannot be denied that there is a prevailing unwillingness to accept them on equal social standing. \* \* \*

"Prior to the war, and when in a state of slavery, they worshipped in the same churches with their masters; but since emancipation has been granted them they have formed churches  
78 of their own. There is now no such thing as mixed congregations in the South. By a process of natural selection the colored people have chosen their ecclesiastical associations among themselves. \* \* \*

"There are no white churches in Presbyteries composed entirely of colored ministers, or where they are in the majority. From this statement it will be seen that our work among the colored people is already substantially organized into separate churches, Presbyteries and Synods. Another very significant fact, which must not be overlooked in this connection, is, that the only advance made in our work among the colored people has been in those localities where their churches and ministers have been organized in separate Presbyteries.

"The reports which your Committee has received from the colored Presbyteries are full of encouragement and hope. On the other hand, where colored churches are associated with white Presbyteries and are in the minority, there has been little or no growth. \* \* \* In view of these obvious facts your Committee is of the opinion that it would be wise to allow our colored ministers and churches to be organized into separate Presbyteries, if they should so desire. Such organization, as shown by the experience of the past, tends to deepen a sense of responsibility, stimulates activity, and helps in the development of manly independence. But this liberty of organization in special and extraordinary cases must not be limited to the colored people. Special legislation for any class or race is not to be considered. If a wise expediency may at times demand a separate organization for the colored people in a particular locality, so may it also for the whites. This is apparent in view of the existing condition of society, especially in the South. The Synod of Catawba covers North Carolina and Southern Virginia; the Synod of Atlantic, South Carolina and Georgia; one colored Presbytery covers Alabama, Mississippi, and part of Tennessee! another the eastern half of Arkansas. In all this vast region it is not possible to organize a white church in connection with our General Assembly, for the reason that such church would be under the care and control of a colored



Presbytery. White Presbyterians, seeking such an organization, must ask of the Colored Presbytery permission to do so, and come under their control. Say what you please about the evils of social prejudice and racial antipathies, the fact remains that the white churches will not associate themselves with colored Presbyteries. Are we then to give over that vast region exclusively to the colored people, and leave them to determine its destiny so far as our Church is concerned? Are we by our laws to draw the color line in that portion of our country, and exclude the whites from our communion? \* \* \*

"Such an amendment, if adopted, would give equal liberty to white and colored churches, in cases in which a separate Presbyterian organization was deemed wise and necessary."

### In General.

The protestants assert that a change of three votes in the Dallas Assembly would have defeated the reference to the Presbyteries. As a matter of fact, a change of four votes would have still left a two-thirds majority for the union proposition. But the suppositional change did not take place, and the allusion, by the protestants, to the effect of such a change is as irrelevant as to say that a contrary change of 74 votes would have made that Assembly unanimous for union. This Assembly has refused to go behind the vote of the Dallas Assembly, or to assume that its members were not competent to vote intelligently on the plainly printed and lengthily discussed proposition for union.

79 The property of the Cumberland Presbyterian Church is in no sense conveyed out of its membership into the membership of the other Church as a result of this union, but our property goes along with our people into the reunited Church, where the property of both Churches becomes the common property of both constituencies. Only those members who may refuse to go with their Church into the union will divest themselves of any property rights.

The Assembly is not a party to confessing that the union movement is premature, when there is a widespread tendency toward reunions among kindred Churches in our own country, and in every Christian land, this being preeminently true on every foreign mission field. Nor does the Assembly admit the implication that there have been any compulsory measures employed by the Church in reaching its deliberate decision to enter this honorable union. The Assembly refuses to impute disloyalty to the membership, but predicates its belief in both the readiness and the willingness of the Church to enter the union, on the plan proposed, upon the fact that the Church itself has decided for the union, and upon the faith that our people, as a rule, will prefer to follow the authoritative and deliberate decisions of their Church rather than the opinions of individuals.

It would be fatal to the practical life of the Church, to await absolute unanimity in order to the discharge of great duties. The official returns of the other Church impress this Assembly with the gratify-

ing heartiness with which that Church approves this union. Even the harmony declared by the protestants to exist between the logic of their position and that of the opposition in the other Church, is hopeful, in that those who can agree so well in separate folds, and in a time of mutual antagonism, surely cannot be wholly uncongenial in the same fold, with mutual liberties recognized and provided for in the terms of union.

The Assembly must emphasize its disavowal of any arbitrary exercise of any authority vested in it, or the assumption of any authority not vested, and must remind the Church that the apparent implication by the protestants that the constituted authorities of our Church have acted arbitrarily or with assumed powers, is not only without foundation in fact but is not in the interest of the peace, purity, and unity of the Church, and is, therefore, to be greatly deplored.

The Assembly does not share the fears of the protestants as to the results of organic union. The only thing that could prevent results highly beneficial to the reunited Church and to the Master's Kingdom, would be the refusal of our people to accept the plain and authorized decision of their Church, and their putting forth extraordinary efforts to thwart and defeat the peace, prosperity, and enlarged opportunities of the great reunited Church, and to promote the disorder, chaos, and confusion which the protestants evince that they, as well as the Assembly, would deplore.

A time like this calls for earnest reflection, and for devout inquiry after the things which make for peace. It calls for that spirit of forbearance and forgiveness among brethren which our Savior  
80 enjoins as the only condition upon which we can expect His pardon. It calls for the exercise of the charity that suffereth long and is kind, that is not easily provoked, that taketh no account of evil, that believeth all things, hopeth all things, endureth all things, and that never faileth.

Henceforth there should be no line of cleavage between brethren who have acted upon the belief that union ought to be effected, and other brethren who have acted upon the belief that it was not best. Both now accepting the voice of their Church, as, to them, the voice of God on this question, and both devoting themselves to the labor of promoting the best interests of the reunited Church, thereby promoting the cause of the Master in this new relation, there will be forgetfulness of present differences and great joy in the sweeter emulation and rivalry of better service.

### Conclusion.

A careful study of the Protest shows that there are really only three grounds of dissent: (1). Doctrinal—They do not believe that doctrinal agreements exists. (2). Legal—They do not believe that union is constitutional. (3). Sentimental—They do not want to give up their name and book.

In answer, we declare as follows. (1). Doctrinal—Two General Assemblies and a majority of our Prebyteries believe that doctrinal agreement does exist. (2). Legal—This General Assembly, the Su-

preme Court of the Church, has declared that every step for union has been constitutionally and legally taken. (3). Sentimental—We, also, love our name and book, but we are willing to yield both, with honor, for the sake of Him who prayed that his disciples might be one.

Let the opportunity for more deliberate reflection now be improved by our people, seeing that the excitement incident to earnest debate may now subside by reason of the fact that the decision is accomplished and final. Our people may now patiently await developments, willing for the event to prove that at least some of their grave apprehensions are not to be realized. Naturally, in the heat of debate, much has been made of supposed ills that might result from union, but it is to be presumed that those who have had such fears are now as desirous as their brethren that the dreaded results may not follow.

It is hardly necessary to remind our people of the fact that there is little difference in the polity and government of the two Churches, both being Presbyterian in form, and that the reunion, when the organizations are fully blended, will require practically no readjustment on the part of a very large majority of the congregations in both Churches, particularly where there is but one of them in a community. Each congregation will have the same control of its affairs as now; it will continue to elect its own officers, select its own pastor, control its own property through its own trustees, admit members to its communion through its own session, bear the same relation to the Presbytery and other judicatories of the Church in accordance with the Presbyterian law and forms of procedure under which we

81 have always operated—in short, the same doctrines will be preached and the same great enterprises conducted by the reunited Church, though we trust with an increased efficiency which a combination of forces makes possible. The terms of union guard carefully the rights of individual ministers and members of both Churches, as well as of the various corporations acting under the authority of the Church as a whole or of any of its judicatories.

While to a large extent the changes will be locally little felt, yet, for the Church at large, there will be much to gratify both constituents to the union: the establishment of a Church truly national in its occupied area, substituting concert of action instead of rivalry wherever the two branches are now in touch, and giving each a constituency where now it has none, giving the reunited Church a wider influence in all public interests, and offering an immediate church home and fellowship everywhere to our people who may move from one part of the country to another.

The General Assemblies of both Churches have now found and declared that the basis of union has been constitutionally adopted, and official telegrams to that effect have been exchanged between the two bodies. Only the details of blending the organizations now remain, and these have been referred to the Joint Committees on union, to formulate and report to the Assemblies a year hence.

Therefore we have now, happily, reached a point at which all who do not resist the voice of our beloved Church and who do not an-

tagonize its interests, may confidently be expected to live faithfully up to the spirit of the eighth Concurrent Declaration adopted by the Assemblies of both branches of the Church:

"It should be regarded as the duty of all our judicatories, ministers and people, to study the things which make for peace, to guard against all needless and offensive references to the causes which have divided us, and to avoid the revival of past issues."

Under the canopy of the great High Priestly prayer of our Savior, let us move forward with unbroken ranks:

"Neither pray I for these alone, but for them also which shall believe on me through their word; that they all may be one; as thou, Father, art in me, and I in thee, that they also may be one in us; that the world may believe that thou hast sent me." John 17: 20, 21.

Respectfully submitted,

S. M. TEMPLETON, *Chairman*,  
WM. H. BLACK,  
A. E. TURNER,  
A. R. TAYLOR,  
E. E. BAIRD,

*Committee.*

12. *Minutes of the General Assembly of the Cumberland Presbyterian Church for the Year 1906.*

Rev. I. D. Steele's Resolution on Union.

The Rev. I. D. Steele offered the following paper, which was adopted:

82 Resolved, 1, That in the reunion and union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, on the doctrinal basis of the Presbyterian Confession of Faith, as revised in 1903, the Cumberland Presbyterian Church does not surrender anything integral in its own system of doctrine, as set out in its own Confession of Faith, nor modify in any particular its adherence to the Word of God as the only infallible rule of faith and practice; nor has the Presbyterian Church asked or expected us to do so.

Resolved, 2, That, in uniting with the Presbyterian Church in the United States of America, the Cumberland Presbyterian Church does not alienate the property now held for particular congregations of the Cumberland Presbyterian Church; but that, in the reunited church, such property will continue to be held for the use and benefit of particular congregations in like manner as heretofore.

Resolved, 3, That, in the adjournment of its General Assembly, as a separate Assembly, the Cumberland Presbyterian Church does not destroy or interrupt its historical continuity, but will continue its life, its history and its work in the reunited Church under the name of the Presbyterian Church in the United States of America.

## Report of Committee on Fraternity and Union.

The General Assembly's Committee on Fraternity and Union submitted the following report, which was read in the Assembly by the Stated Clerk:

\* \* \* \* \*

After the reading of the foregoing report, Dr. S. M. Templeton offered the following resolution, which was adopted:

Resolved, That the foregoing Report of the Committee on Fraternity and Union be accepted, and that the "Joint Report on Reunion and Union," contained in said report, be adopted.

On this resolution the ye and nay vote was called for, and was taken, with the following result:

\* \* \* \* \*

The result of the vote, as thus indicated, is as follows:

Ministers voting in the affirmative.....	85
Ruling elders voting in the affirmative.....	78
Total affirmative vote.....	165
Ministers voting in the negative.....	50
Ruling elders voting in the negative.....	41
Total negative vote.....	91
Affirmative majority .....	74

83 The Moderator then declared that the resolution offered by Dr. Templeton had been carried, and that thereby the Report of the Committee on Fraternity and Union had been accepted, and that the "Joint Report on Reunion and Union," contained therein, had been adopted.

## Calling the Roll.

The roll was then called, and the following members were absent:

Ministers—W. E. Dooley, R. B. Fisher, Samuel Garvin, M. G. Milligan, Jr.

Ruling Elders—J. N. Andrews, W. E. Beaty, W. W. Beall, Augustus H. Burns, H. D. Carroll, Elmer Cooper, C. F. Edmonson, A. D. English, John Gearhart, W. T. Jones, T. W. Keller, R. M. Milburn, W. C. Murphy, M. M. Russell, Wm. F. Smith, W. D. Springer, A. D. Stroud, Harrison Vail.

## Moderator's Declaration.

In terms contained in resolution fourteen of the Joint Report on Reunion and Union, Moderator Landrith then made the following Declaration:

The joint report of the two Committees on Reunion and Union and the recitals and resolutions therein contained and recommended for adoption, having been adopted by the General Assembly of the Presbyterian Church in the United States of America and the General Assembly of the Cumberland Presbyterian Church, and official notice of such adoption having been received by each of the said General Assemblies from the other; I do solemnly declare and here publicly announce that the basis of reunion and union is now in full force and effect, and that the Cumberland Presbyterian Church is now reunited with the Presbyterian Church in the United States of America as one Church, and that the official records of the two Churches during the period of separation shall be preserved and held as making up the history of the one Church.

#### Resolution for Adjournment.

The following resolution was then presented by Dr. J. S. Grider:  
Resolved, That this General Assembly do now adjourn sine die, as a separate General Assembly, to meet in and as part of the  
84 one hundred and nineteenth General Assembly of the Presbyterian Church in the United States of America, on the third Thursday of May, 1907, at 11 o'clock a. m., at the place chosen by the one hundred and eighteenth General Assembly of the Presbyterian Church in the United States of America.

J. S. GRIDER.

D. M. PRENDERGAST.

D. C. DE WITT.

Elder D. M. Prendergast moved the adoption of the foregoing resolution, the motion was seconded by Rev. D. C. De Witt, and the resolution was adopted by the Assembly, viva voce.

#### Final Adjournment.

Moderator Dr. Landrith then said: I now declare this General Assembly adjourned sine die, as a separate Assembly, to meet in and as a part of the One Hundred and Nineteenth General Assembly of the Presbyterian Church in the United States of America, on the third Thursday of May, 1907, at eleven o'clock, a. m., at the place chosen by the One Hundred and Eighteenth General Assembly of the Presbyterian Church in the United States of America, of 1906.

#### Supplement.

##### Recent Declarations by Presbyterian Assembly, U. S. A.

At the last meeting of the General Assembly of the Presbyterian Church in the United States of America, in Des Moines, Iowa (May, 1906), the Rev. James D. Moffat, D. D., offered the following prayer, which was adopted by a unanimous and hearty vote, and the same is here published by request of said Assembly, this request having been expressed by resolution as follows:

"Resolved, That it will be acceptable with and gratifying to this General Assembly to have the foregoing Declarations printed in the

Minutes of the Cumberland Presbyterian General Assembly, if the Stated Clerk of that Assembly feels at liberty so to publish them."

### The Declarations.

"The General Assembly of the Presbyterian Church in the United States of America, having added to its Rolls the Synods and Presbyteries and churches and ministers lately subject to the General Assembly of the Cumberland Presbyterian Church, and constituting said Church; and earnestly desiring to retain in the membership of each particular church every one in connection therewith prior to the consummation of the reunion; and being apprehensive  
85 that some of them may be reluctant to acquiesce in what has now been effected, because of certain misapprehensions which should be removed if possible, now solemnly declares:

"First, That in the Presbyterian Church no acceptance of the doctrines of the Church is required of any communicant, beyond a personal faith in Jesus Christ as Son of God, and Saviour of the world, and a sincere acceptance of Him as Lord and Master.

"Second, That ministers, ruling elders and deacons, in expressing approval of The Westminster Confession of Faith as revised in 1903, are required to assent only to the system of doctrine contained therein; and not to every particular statement in it; and inasmuch as the two Assemblies meeting in 1904 did declare that there was then a sufficient agreement between the systems of doctrine contained in the Confessions of the two Churches to warrant the union of the Churches, therefore the change of doctrinal standards resulting from the union involves no change of belief on the part of any who were ministers, ruling elders or deacons in the Cumberland Presbyterian Church. Further, this Assembly specifically declares that since the revision of 1903, by which the Confession of Faith was amended, by change of its text, by a declaratory statement, and by additions, it is no longer allowable to interpret our system of doctrine in any fatalistic sense; nor are we willing to admit that such fatalistic interpretation was ever warranted, whatever misapprehension may have existed in the mind of any person.

"Third, In view of the fact that reunion involves no change whatever in the relations of communicants, ruling elders and deacons, to their own particular churches; and, except in few instances, none in their relations to their Presbyteries and Synods; and brings all into a General Assembly differing from their former Assembly only in size and its representation of a larger Church; this Assembly expresses the hope that all who have thus far opposed reunion may soon realize that they can engage as heartily in the chief work that our Lord requires of us—the evangelization of the world—as ever before, and with a prospect of a great efficiency because they lay aside personal preferences in the interest of the union of Presbyterians in a great forward movement."

Attest:

WM. H. ROBERTS,  
*Stated Clerk.*

J. M. HUBBERT,  
*Stated Clerk, C. P. General Assembly, 1906.*



13. *Constitution of the Cumberland Presbyterian Church.*

## The Church.

1. Jesus Christ, who is now exalted far above all principality and power, has established in this world a kingdom which is his Church.

## Church Courts.

24. It is necessary that the government of the Church be  
86 exercised under some certain and definite form, and by various courts, in regular gradation. These courts are denominated Church-sessions, Presbyteries, Synods, and the General Assembly.

25. The Church-session exercises jurisdiction over a single Church; the Presbytery, over what is common to the ministers, Church-sessions, and Churches within a prescribed district; the Synod, over what belongs in common to three or more Presbyteries, and their ministers, Church-sessions, and Churches; and the General Assembly, over such matters as concern the whole Church; and the jurisdiction of these courts is limited by the express provisions of the Constitution. Every court has the right to resolve questions of doctrine and discipline seriously and reasonably proposed, and in general to maintain truth and righteousness, condemning erroneous opinions and practices which tend to the injury of the peace, purity, or progress of the Church; and, although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation.

27. The Church-session is charged with maintaining the spiritual government of the Church, for which purpose it is its duty to inquire into the doctrines and conduct of the Church-members under its care; to receive members into the Church; to admonish, suspend, or excommunicate those found delinquent, subject to appeal; to urge upon parents the importance of presenting their children for baptism; to grant letters of dismission, which, when given to parents, shall always include the names of their baptized children; to ordain and install ruling elders and deacons when elected, and to require those officers to devote themselves to their work; to examine the records of the proceedings of the deacons; to establish and control Sabbath-schools and Bible-classes, with especial reference to the children of the Church; to order collections for pious uses and Church purposes; to take the oversight of the singing in the public worship of God; to assemble the people for worship when there is no minister; to concert the best measures for promoting the spiritual interests of the Church; to observe and carry out the injunctions of the higher courts; and to appoint representatives to the higher courts, and require on their return a report of their diligence.

28. Every Church-session shall keep an accurate record of its proceedings, which must be, at least once in every year, submitted to the inspection of the Presbytery.

31. The Presbytery has the power to examine and decide appeals,

complaints, and references brought before it in an orderly manner; to receive, examine, dismiss, and license candidates for the holy ministry; to receive, dismiss, ordain, install, remove, and judge ministers; to review the records of the Church-sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Government of the Church; to establish the pastoral relation, and to dissolve it, at the request of one or both of the parties, or where the interests of religion imperatively demand

87 it; to set apart evangelists to their proper work; to require ministers to devote themselves diligently to their sacred calling, and to censure and otherwise discipline the delinquent; to see that the injunctions of the higher courts are obeyed; to condemn erroneous opinions which injure the purity or peace of the Church; to resolve questions of doctrine and discipline seriously and reasonably proposed; to visit particular Churches, to inquire into their condition, and redress the evils that may have arisen in them; to unite or divide Churches, with the consent of a majority of the members thereof, and, for cause, to dissolve the relations between it and a particular Church, which shall thereafter cease to be a constituent of the Cumberland Presbyterian Church, and forfeits all rights as such; to form and receive new Churches; to take special oversight of vacant Churches; to concert measures for the enlargement of the Church within its bounds; in general, to order whatever pertains to the spiritual welfare of the Churches under its care; to appoint representatives to the higher courts; and, finally, to propose to the Synod, or to the General Assembly, such measures as may be of common advantage to the Church at large.

37. The Synod has power to receive and decide all appeals, complaints, and references regularly brought up from the Presbyteries; to review the records of the Presbyteries, and to redress whatever they may have done contrary to order; to take effectual care that Presbyteries observe the Government of the Church, and that they obey the injunctions of the higher courts; to create, divide, or dissolve Presbyteries, when deemed expedient, to appoint ministers to such work, proper to their office, as may fall under its own particular jurisdiction—in general, to take such order with respect to the Presbyteries, Church-sessions, and Churches under its care as may be in conformity with the principles of the Government of the Church and of the word of God, and as may tend to promote the edification of the Church; to concert measures for promoting the prosperity and enlargement of the Church within its bounds; and, finally, to propose to the General Assembly such measures as may be of common advantage to the whole Church.

43. The General Assembly shall have power to receive and decide all appeals, references, and complaints regularly brought before it from the inferior courts; to bear testimony against error in doctrine and immorality in practice, injuriously affecting the Church; to decide in all controversies respecting doctrine and discipline; to give its advice and instruction, in conformity with the Government of the Church, in all cases submitted to it; to review the records of the Synods; to take care that the inferior courts observe the Government

of the Church; to redress whatever they may have done contrary to order; to concert measures for promoting the prosperity and enlargement of the Church; to create, divide, or dissolve Synods; to institute and superintend the agencies necessary in the general work of the Church; to appoint ministers to such labors as fall under its jurisdiction; to suppress schismatical contentions and disputations, according to the rules provided therefor; to receive under its jurisdiction other ecclesiastical bodies whose organization is con-

88 formed to the doctrine and order of this Church, to authorize Synods and Presbyteries to exercise similar power in receiving bodies suited to become constituents of those courts, and lying within their geographical bounds respectively; to superintend the affairs of the whole Church; to correspond with other Churches; and, in general, to recommend measures for the promotion of charity, truth, and holiness throughout all the Churches under its care.

#### Amendments.

60. Upon the recommendation of the General Assembly, at a stated meeting, by a two-thirds vote of the members thereof voting thereon, the Confession of Faith, Catechism, Constitution, and Rules of Discipline, may be amended or changed when a majority of the Presbyteries, upon the same being transmitted for their action, shall approve thereof.

The other parts of the Government—that is to say, the General Regulations, the Directory for Worship, and the Rules of Order—may be amended or changed at any meeting of the General Assembly by a vote of two-thirds of the entire number of Commissioners enrolled at that meeting, provided such amendment or change shall not conflict, in letter or spirit, with the Confession of Faith, Catechism, or Constitution.

#### Particular Church.

4. A particular Church consists of a number of professing Christians voluntarily associated together for Divine worship and godly living, agreeably to the Holy Scriptures, and submitting to a certain form of government.

Its officers are the minister in charge, the ruling elders and the deacons.

Its jurisdiction is lodged in the Church-session, composed of the minister in charge and ruling elders.

16. In all cases, except when a Commission for that purpose shall have been appointed by the Presbytery, any ordained minister, belonging to the Presbytery in the bounds of which the new Church is to be located, may preside at the organization of such Church, and perform all the duties incident thereto; but in such case the new Church shall not be located within five miles of an existing Cumberland Presbyterian Church without the consent of Presbytery.

7. In the organization of a Church the first step is to receive testimonials on behalf of such of the applicants as are members of the Church, if there be any; and then to admit upon a profession of

faith in Christ such candidates as, on examination, may be found qualified.

These persons should, in the next place, be required to enter into covenant by answering the following question affirmatively: Do you, in reliance on God for strength, solemnly promise and covenant that you will walk together as an organized Church on the principles of the Government of the Cumberland Presbyterian Church; that you will support the gospel as God has prospered you, and that you will study the purity and harmony of the whole body?

89 The presiding minister shall then say: I now pronounce and declare that you are constituted a Church according to the word of God and the principles of the Government of the Cumberland Presbyterian Church, subject to the approval of the Presbytery. In the name of the Father, and of the Son, and of the Holy Spirit. Amen.

Ruling elders and deacons are then to be elected, ordained, and installed.

46. When any person has been elected to either of these offices, and declares his willingness to accept, the Church-session shall appoint a day for his ordination.

The day having arrived, and the Church-session being convened in the presence of the Church, a sermon shall be preached, if convenient, after which the presiding minister shall state in a concise manner the warrant and nature of the office of ruling elder or deacon, together with the character proper to be sustained, and the duties to be performed.

Having done this, he shall propose to the candidate, in the presence of the Church, the following questions:

III. Do you approve of the Government of the Cumberland Presbyterian Church?

V. Do you promise to study the peace, purity, and edification of the Church?

VI. (In case of a ruling elder.) Do you promise to submit yourself to your brethren in the Lord assembled in the various Church-courts?

#### Relation Between Ministers and Churches.

58. No minister shall take charge of a Church as its pastor, or otherwise, without the consent of the Presbytery in the bounds of which the Church is located, or subject to the approval of the Presbytery at its next stated meeting; and when such consent is obtained, the parties shall fulfill mutual engagements with fidelity.

Where the relation of pastor is formed between a minister and a Church, it shall not be dissolved except by mutual consent, of which the parties shall make report to the Presbytery; or, when one of the parties so desires, the Presbytery shall do so, if sufficient reasons are presented therefor, or where the interests of religion, in the opinion of the Presbytery, shall imperatively demand it. But such relations ought not to be broken up hastily.

59. In forming the pastoral relation, the following rules should be observed:

I. When a church wishes to procure the labors of a minister as

pastor, it shall give him a regular call for an indefinite time, stating in the call the salary proposed.

II. This call should be submitted to the Presbytery, and if the minister accept, and the Presbytery approve of the relation, a day shall be appointed for the installation.

90     14. *Confession of Faith of the Cumberland Presbyterian Church.*

Church Authority.

108. The Lord Jesus, as king and head of his Church, has therein appointed a government intrusted to Church-officers, distinct from the civil government.

Church Courts.

110. Church-government implies the existence of Church-courts, invested with legislative, judicial, and executive authority; and the Scriptures recognize such institutions, some of subordinate and some of superior authority, each having its own particular sphere of duties and privileges in reference to matters ministerial and ecclesiastical, yet all subordinate to the same general design.

111. It is the prerogative of these courts, ministerially, to determine controversies of faith and questions of morals, to set down rules and directions for the better ordering of the public worship of God and government of his Church, to receive complaints in cases of maladministration, and authoritatively to determine the same, which determinations are to be received with reverence and submission.

74. Those who, upon a similar pretense, shall oppose the proper exercise of any lawful authority, whether civil or ecclesiastical, and thereby resist the ordinance of God, may lawfully be called to account, and be subjected to the censures of the Church.

15. *Rules of Discipline.*

The Nature of Discipline.

1. Discipline is the exercise of such authority and the application of such system of laws as are deemed necessary for the internal government of the Church of Christ. In one sense it refers to the whole government, inspection, and control which the Church maintains over its members, officers, and courts; but in a restricted sense it signifies judicial investigation. \* \* \*

Removing Questions from a Lower to a Higher Court.

67. Every decision made by any Church-court, except the highest, is subject to the review of a superior court, and may be brought before it by general review and control, reference, appeal, or complaint.

General Review and Control.

68. Every court above the Church-session shall, at stated intervals, as prescribed, review the proceedings of the court next below. If

any lower court shall omit to send up its records for this purpose, the higher court may order them to be produced, either immediately, or at a particular time, as circumstances may require.

69. In reviewing the records of an inferior court, it is proper to examine: 1. Whether the proceedings have been regular. 2. Whether they have been wise, equitable, and for the edification of the Church. 3. Whether they have been correctly recorded. 4. Whether the injunctions of the superior courts have been obeyed.

70. Generally, the superior court may discharge its duty by simply recording on its own Minutes the approval, the correction of proceedings, or the censure which it may think proper to pass on the records under review, also by making an entry of the same in the book reviewed. But, should irregular proceedings be found, such as demand interference, the inferior court may be required to review and correct them. In cases of process, however, no judgment of an inferior court shall be reversed, unless regularly brought up by appeal or complaint.

71. Should courts neglect to perform their duty, and thereby heretical opinions or corrupt practices be allowed to gain ground, or offenders suffered to escape, or circumstances of great irregularity be not distinctly recorded, whereby their records may not exhibit a full view of their proceedings, the superior court, if satisfied that such neglect or irregularity has occurred, shall take cognizance of the same, examine, deliberate, and judge in the whole matter as if it had been recorded, and thus brought up by review of the records.

72. When a court of appellate jurisdiction shall be advised, either by the records of the court below, or by memorial with or without protest, or by any other satisfactory mode, of any important delinquency or irregular proceedings of such court, it may be cited to appear by representative or in writing, at a specified time and place, to show what it has done, or failed to do, in the matter in question. The court issuing the citation, after full investigation, may reverse the proceedings in other than judicial cases, or it may remit the whole matter to the court below, with an injunction to take it up and dispose of it in a regular manner; or all further proceedings in the matter may be suspended by the appellate court, as circumstances may require.

### References.

73. A reference is a representation of a matter not yet decided, made by an inferior to a higher court, and must always be in writing.

### Appeals.

80. An appeal is the removal of a cause already decided from an inferior to a superior court, the effect of which is to arrest sentence until the matter is finally decided. It is allowable, after judgment, to either of the parties to the proceedings, but those who have not submitted to a regular trial are not entitled to appeal.

## Complaints.

89. A complaint is a representation made to a superior court against an inferior court. Any member of the Church, submitting to its authority, may complain against every kind of decision, except where an appeal has been taken. A complaint shall not suspend, while pending, the effect of the decision of which the complaint is made. Notice of complaint shall be given in the same time and manner as notice of appeal.

92 95. The higher court shall take cognizance of, and render its judgment on, all protests appearing upon the records passing under its review.

16. *General Regulations.*

## Admission of New Churches.

3. When a new Church is organized it shall, through its Church-session, apply to the Presbytery in the bounds of which it is located to become a constituent thereof, in the following or like form:

To the Presbytery of —:

The undersigned respectfully represent that on the — day of —, A. D. —, there was organized by the Rev. — (or by a Commission of Presbytery, as the case may be), at —, a new Church, adopting the principles of the Government of the Cumberland Presbyterian Church, with a membership of —, and electing the undersigned as ruling elders, and — and — as deacons.

Under and by authority of said Church, we do hereby apply to be received under your care, and we promise a cheerful compliance on its part, as well as our own, with all the duties and obligations enjoined upon particular Churches and their officers by the Government of the Cumberland Presbyterian Church.

— —,  
— —,  
— —,  
(*Ruling Elders.*)

(Date.)

## Selecting Ministers and Pastors.

4. In the exercise of its power to procure a minister to take charge of a Church as pastor or otherwise, the Church-session should in all cases endeavor to ascertain the will of the Church, and procure such minister as will best subserve the interests of that particular Church.

17. *Directory for Worship.*

## Admission of Persons into the Church.

21. In publicly receiving new members into the Church on profession of their faith in Christ, the following is recommended as a



## Form of Church Covenant.

Let the candidates for membership rise, and the minister propound to them, severally, the following questions, to be answered in the affirmative:

IV. Do you promise to abide by and support the rules and regulations of the Cumberland Presbyterian Church so long as you may be a member thereof; to be faithful in your attendance at the public religious services in the congregation, including the prayer-meetings, as God may give you health and strength, endeavoring to keep the unity of the Spirit in the bond of peace; to love your brethren in the Lord; to act toward them with kindness and justice; to judge with candor, and admonish with charity?

*Supplement.*

Extract from Preface of Confession of Faith of the Cumberland Presbyterian Church, Adopted in 1814.

"They [the Synod] have endeavored to erase from the Old Confession the idea of fatality only, which has long since appeared to them to be taught in part of that book. But, notwithstanding, the Synod have ventured to model, to expunge and to add to the Confession of the General Presbyterian Church, yet they are free to declare that they think that to be, in the main, an admirable work, especially to have been framed so shortly after Roman superstition and idolatry had almost covered the whole Christian world." (C. P. Dig. p. 24.)

From the Form of Government of the Presbyterian Church, U. S., Adopted in 1879.

"SECTION 62—IV. For the orderly and efficient dispatch of ecclesiastical business, it is necessary that the sphere of action of each court should be distinctly defined. The Session exercises jurisdiction over a single church, the Presbytery over what is common to the ministers, Sessions, and churches within a prescribed district; the Synod over what belongs in common to three or more Presbyteries, and their Ministers, Sessions, and churches; and the General Assembly over such matters as concern the whole Church; and the jurisdiction of these courts is limited by the express provisions of the Constitution. Every court has the right to resolve questions of doctrine and discipline seriously and reasonably proposed, and in general to maintain truth and righteousness, condemning erroneous opinions and practices which tend to the injury of the peace, purity, or progress of the Church; and although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation. Hence, these courts are not separate and independent tribunals; but they have a mutual relation, and every act of jurisdiction is the act of the whole Church, performed by it through the appropriate organ." (Pps. 19 and 20.)

From the Minutes of the General Assembly of the Presbyterian Church, U. S., for 1898.

The report of the Committee on Foreign Correspondence on the overture relating to union with the Associate Reformed Synod of the South was taken from the docket and adopted, and is as follows:

94 The Committee on Foreign Correspondence, to which was referred the overture from Columbia Presbytery proposing organic union with the Associate Reformed Church, report recommending that the petition of the overture asking for the appointment of a committee to confer with the Associate Reformed Church be granted.

We recommend that Rev. F. B. Webb, D. D., Rev. M. S. Kennedy, Rev. Alexander Sprunt, and Hon. J. W. Lapsley be appointed, and that they be directed to confer with the Associate Reformed Church, proposing organic union with that church, and asking for the appointment of a committee on their part to confer with our committee. If the Associate Reformed Church agree our committee is authorized to arrange details for a union and report to the next General Assembly.

Our committee is directed to express to the Associate Reformed Church our most cordial fraternal regard, and to assure them of our readiness for a union with them.

R. P. KERR, *Chairman*.

From the Constitution of the C. P. Church, 1883.

SECTION 40. The General Assembly is the highest court of this church, and represents in one body all the particular churches thereof. It bears the title of the General Assembly of the Cumberland Presbyterian Church, and constitutes the bond of union, peace, correspondence, and mutual confidence among all its Churches and courts.

95

### *Index.*

Action of C. P. Assembly of 1903.....	24-27
Action of C. P. Assembly of 1904.....	34
Action of C. P. Assembly of 1905.....	41-45
Action of C. P. Assembly of 1906.....	59
Adjournment, resolution of, C. P. Assembly, 1906.....	60
Adjournment, Moderator's declaration of, 1906.....	61
Adoption of C. P. Confession of Faith of 1813-14.....	3, 24
Adoption of Joint Report, 1904, C. P. Assembly.....	34
Adoption of Joint Report, 1906, C. P. Assembly.....	59
Agreement organizing Cumberland Presbytery.....	1
Amendment to Presbyterian Constitution, separate presbyteries..	54
Amendment of C. P. Standards, provision for (Con., Sec. 60) ..	65
Answer to protest of 1905.....	48-58
Appeals .....	68
Appellate proceedings .....	67
Attempt at organic union. See Union.	

Basis of Union, adopted by C. P. Assembly, 1904.....	34
Basis of Union, form of submission of.....	44
Basis of Union resolution submitting, 1904.....	34
Brief Statement, 1903.....	37
Buck's Theological Dictionary, statement of doctrine in.....	24
Calling the roll, 1906.....	60
Certificate of vote of presbyteries, form of.....	41
Changed Sections, revision of, 1903.....	55
Church, divine origin of.....	67
Church, particular, what is.....	65
Church, particular, officers of.....	65
Church, particular, organization of.....	65-6
Church, particular, reception of by presbytery.....	69
Circular Letter of 1810.....	2
Communication submitting Basis of Union, form of.....	44
Compact of 1810.....	1
Complaint.....	68
Concurrent Declarations.....	31
Confession of Faith, C. P., adoption of, in 1810.....	1
Confession of Faith, C. P., revision of, in 1813-14.....	3, 24
Confession of Faith, C. P., Revision Committee, report of, 1882.....	3
Confession of Faith, C. P., of 1883, adoption and submission of.....	5
Confession of Faith, C. P., of 1883, sending down to presbyteries.....	5
Confession of Faith, C. P., Section 108—church and church officers divinely appointed.....	67
96 Confession of Faith, C. P., Sections 110-11, powers of church courts.....	67
Confession of Faith, C. P., Section 74, resistance to courts censurable.....	67
Confession of Faith, Presbyterian, revision of 1903.....	35
Congregation. See Particular church.	
Constitution, C. P., adopted in 1810.....	1
Constitution, C. P., amended in 1829.....	3
Constitution, C. P., report of revision committee, 1882.....	4
Constitution, C. P., of 1883, adoption and submission of.....	5
Constitution, C. P., Sec. 1—divine authority of the church.....	62
Sec. 24—the courts and their gradation.....	62
Sec. 25—jurisdiction of church courts.....	63
Sec. 31—powers of presbytery.....	63
Sec. 37—powers of synod.....	64
Sec. 40—Gen'l Assembly represents whole church.....	71
Sec. 43—powers of General Assembly.....	64
Sec. 60—power to amend standards.....	65
Sec. 4—definition of particular church—statement of its officers, and composition of its session.....	65
Sec. 16—organization of a congregation.....	65
Secs. 58, 59—relation between ministers and churches.....	66
Constitution, Presbyterian, Sec. 62.....	70
Constitutional Amendment, Presbyterian, race separation.....	54
Courts, have legislative, executive and judicial powers.....	67
Courts, higher, powers as to lower.....	67-69

Courts, resistance of, censurable.....	67
Declaration, Scotch, adopted in Japan.....	22
Declaration, C. P., of 1813.....	24
Declarations Concurrent.....	31
Declarations of Presbyterian Assembly, 1906.....	61
Declaration of C. P. Moderator, 1906.....	60
Declaration of adjournment, C. P. moderator, 1906.....	61
Declaratory Statement of 1903.....	35
Directory for Worship.	
Sec. 21—Reception of members, church covenant.....	69
Discipline, Rules of.....	67
Discipline, defined.....	67
Earle Resolution, 1898, on union.....	21
Form of certificate of presbyterial vote.....	41
Form submitting communication.....	44
Four points of difference from Westminster Confession.....	24
General Assembly, powers of (Sections 40, 43, of Con.)....	43, 71
General Regulations	
Sec. 3—reception of new church by presbytery.....	69
Sec. 4—pastor called by session.....	69
Higher courts, powers as to lower.....	67-69
Jurisdiction of church courts. Con., Sec. 25.....	63
97 Japanese Union, 1889-90.....	22
Joint Report of 1904.....	30
Joint Report of 1904, adopted and submitted.....	34
Joint Report of 1904, vote on.....	34
Joint Report of 1906, adopted.....	59
Majority report of canvassing committee of 1905.....	41
Members, covenant of.....	69
Minority report of canvassing committee of 1905.....	43
Moderator's Declaration, 1906.....	60
Organization of the Church, 1810.....	1
Organization of a particular church.....	65
Particular church, what is.....	65
Pastor, called by session.....	69
Pastor, call of, approved by presbytery.....	66
Plan of Re-Union.....	30
Presbyteries, form of report vote on union.....	41
Presbyterian Confession, approved except fatality.....	2, 24
Presbyterian General Assembly	
Declarations of 1906.....	61
Presbyterian constitutional amendment as to races separation.....	54
Report of committee on same.....	54
Presbyterian, Southern, Constitution, Sec. 62.....	70
Presbyterian, Southern, Minutes of 1898, Union.....	70
Protest in Pres. Assem. of 1904.....	51
Answer to same.....	51
Protest in Cumberland Presbyterian Assembly of 1905.....	45
Protest answer to same.....	48
Protest, higher court to act on, Con., Sec. 95.....	69
Races, separation of. See separation of races.	

Recommendations of joint committee on union.....	33
Report, presbyterial, of vote on union, form of.....	41
Report of canvassing committee of vote of presbyteries on union	
Majority .....	41
Minority .....	43
Resolutions of I. D. Steele.....	58
Resolutions adopting joint report of 1906.....	59
Resolution for adjournment, 1906.....	60
Review and control.....	67
Reference .....	68
Revision of 1903, of Presbyterian Confession of Faith.....	35
Revision of 1903, instructions to Revision Committee.....	49
Roll call of 1906.....	60
Rules of Discipline.....	67
Sec. 1—Nature of Discipline.....	67
Sec. 67—Powers of higher courts over lower.....	67
Secs. 68 to 72—Review and Control.....	67-68
Sec. 73—Reference .....	68
98    Sec. 80—Appeals .....	68
Sec. 89—Complaints .....	68
Sec. 95—Protests .....	69
Scotch Declaration, adopted in Japan.....	22
Separation of the races	
Recommendation 1, of Joint Report.....	33
Constitutional amendment, providing for.....	54
Report of committee which framed it.....	54
Session, powers of.....	63
Session, what constitutes.....	65
Southern Presbyterian Constitution, Sec. 62.....	70
Southern Pres. Assembly, 1898, steps to form union.....	70
Statement, Declaratory.....	35
Statement, Brief.....	37
Steele Resolutions.....	58
Submission communication.....	44
Synod, powers of.....	64
Templeton Resolutions, 1904.....	34
Union, Attempts at	
In 1810, Digest, page 18.....	2, 6
In 1811.....	6
In 1812.....	6
1813, Digest, page 19.....	3
In 1860, Digest, page 29.....	7
In 1867-8.....	7-12
In 1873-4.....	12-16
In 1882-83.....	16-17
In 1885.....	17-19
In 1886.....	19-20
In 1887.....	20-21
Union, constitutional power to form, Earle Resolution, 1898.....	21
Union of churches in Japan.....	22
Union Committee, C. P., report of 1904.....	27
Union Committee, joint, 1904.....	30

Union Committee, joint, 1906.....	59
Union, Southern Presbyterian Assembly's power to form.....	70
Vote of C. P. Assembly, 1904, on joint report.....	34
Vote of C. P. Assembly, 1905, on report of canvassing committee .....	45
Vote of presbyteries announced by moderator.....	45
Vote of presbyteries as reported by canvassing committee.....	42
Vote on joint report of 1906.....	59
Westminster Confession approved, except fatality.....	2, 24 & 70
Westminster Confession, Revision of 1903.....	35
Worship, Directory for, church covenant.....	69

99 No exhibit "B" is on file or referred to in the bill, but exhibit "C" was filed, as follows, viz:

We the undersigned do hereby bargain, sell and convey to W. T. Hardison, Isaac T. Rhea, Nat. F. Dortch and John M. Gaut, trustees, the lot of ground situated in the city of Nashville, Davidson County, Tennessee, on the southeast corner of Market Street and Lindsley Avenue and bounded as follows, to-wit:

Beginning at the intersection of said streets and running thence eastwardly with the southern margin of Lindsley Avenue, one hundred feet; thence at right angles to said Avenue one hundred and seventy feet to an alley; thence with the line of said alley one hundred feet to the eastern margin of Market Street; thence with Market Street one hundred and seventy feet to the *begging*.

The consideration of this conveyance is sixty dollars per foot, or six thousand dollars, two thousand dollars of which is paid in cash, the receipt of which is hereby acknowledged and for the remainder the said trustees have executed their four promissory notes dated of this date one for fourteen hundred and eighty —, payable to Hattie G. Mason and due one year after date, another for the same amount payable to her and due two years after date; one for five hundred and twenty dollars payable to Minnie G. Stevenson due one year after date and the fourth one for the same amount payable to her two years after date. All of said notes bear interest from date and a lien is hereby retained upon the property conveyed to secure their payment.

To have and to hold unto the said trustees and their successors in trust for the use and benefit of a congregation of the Cumberland Presbyterian Church to be hereafter organized in South Nashville; said congregation having already been so far organized as to elect said trustees.

We hereby covenant that we are lawfull- seized of said property, that we have a good right to make this conveyance and that the property is free from all encumbrances.

We further covenant to forever warrant and defend the title thereto against the claims of all persons whomso-ver.

Witness our hands this 23d day of May, 1890.

J. R. MASON.  
HATTIE G. MASON.  
E. B. STEVENSON.  
MINNIE G. STEVENSON.

STATE OF TENNESSEE,

*Davidson County:*

I personally appeared before me John A. Baxter, a notary public in and for the county and State the within named J. R. Mason, Hattie G. Mason, E. B. Stevenson, and Minnie G. Stevenson, 100 the bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained. And Hattie G. Mason and Minnie G. Stevenson, wives of the said J. R. Mason and E. B. Stevenson, having personally appeared before me, privately and apart from their husbands the said Hattie G. Mason and Minnie G. Stevenson, acknowledged the execution of said deed to have been done by them freely, voluntarily, and understandingly, without compulsion or constraint from their said husbands and for the purposes therein expressed. Witness my hand and official seal at Nashville, Tennessee, this 23d day of May, 1890.

JOHN A. BAXTER,  
*Notary Public.*

Endorsed: Filed April 14, 1909, H. M. Doak, Clerk.

The following order allowing an amendment of the bill was entered, viz:

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

In this cause on this the 23d day of April, 1909, complainants moved the court for leave to amend their bill setting forth more explicitly the facts as to the citizenship of one of the complainants and as to the effect of the change of possession sought to be prevented, which leave is granted, copy of the amendments to be furnished the defendants or their counsel before the hearing of the application for temporary injunction.

The following amendment was filed, viz:

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

To the Honorable the judges of the Circuit Court of the United States for the Middle District of Tennessee:

Complainants, by leave of court amend their bill of complaint by adding to the paragraph on page 22, ending with the words, "Grace Church," of the original bill the following:

Complainant Sharpe further states that about two years ago he came to Nashville, Tennessee, to attend a medical college in that city, that soon after coming to Nashville he applied for membership and was received into Grace Church; that since then he has attended



regularly, from Sunday to Sunday and during the week, the religious services conducted in said church and has taken an active part in the work of the church, except during the time of the summer vacation of the medical college, which he spent at his home in Mississippi where his father and mother lived and now live and where he had summer employment in a drug store. Since  
 101 *he be-* Since he became a member of Grace Church he has been and still is a regular contributor to its support. The regular course of study in the medical college covers a period of four years and if complainant takes the regular course, which he expects to do, he will spend in Nashville two years more and will continue to be a member of Grace Church, a regular attendant upon its services, participant in its work and a regular contributor to its maintenance all as heretofore. Complainant has not yet determined whether after he shall have completed his medical education he will make his permanent home in Mississippi, or in Nashville, Tennessee, or elsewhere. Notwithstanding most of his time has been spent in Nashville for two years past he has continued his citizenship in Mississippi, has continued to vote there and exercise all of the privileges and discharge all of the duties of a citizen of that state.

Complainants further state that if defendants are allowed to take possession of said property, they, complainants, cannot conscientiously attend the services conducted therein by the present or future pastors chosen by said session of said present Grace Cumberland Presbyterian Church and which services will be under the control of said session. Complainants are advised and believe that as members of said Grace Church and as beneficiaries of the trust for which said property is held they have the right to come into a court of equity and cause said property to be held exclusively for the services conducted for the benefit of and under the authority of the Presbyterian Church in the United States of America and to prevent it being used exclusively for services conducted for the benefit of and under the authority of a different denomination, as will be the case of said defendants are allowed to carry out their purpose to take possession of the property.

JOHN M. GAUT,  
*Solicitor for Complainants.*

STATE OF MISSISSIPPI,  
*Lee County, ss:*

Before me, G. M. Crane, a notary public in and for said county this day personally appeared C. R. Sharpe, one of the complainants in the foregoing amendment of the original bill in the above-entitled cause and made oath that the facts therein stated as of his own knowledge are true — that those stated on information and believe he believes to be true.

C. R. SHARPE.

Sworn to and subscribed before me this the 23d day of April, 1909.

[SEAL.]

G. M. CRANE,  
*Notary Public.*

Endorsed: Filed May 1, 1909, H. M. Doak, Clerk by F. McLean, D. C.

The following motion for preliminary injunction was filed, to-wit:

102

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

In this cause the complainants move the court for a preliminary injunction restraining the defendants, E. W. Bonham, John M. Smith, J. H. Barbee, J. N. Hobbs, John B. Robertson, Thomas H. Allen, T. S. Hardison, Ben E. White, Hardy Copeland, and all the members of Grace Cumberland Presbyterian Church and all who are combined and associated with them, from taking or attempting to take possession of the house of worship now in possession of Grace Church, situated on the Southeast corner of Second Street and Lindsley Avenue in the city of Nashville, Tennessee, or other property contained therein or pertaining thereto and from interfering with the pastor of said church or his successor or successors in the conduct of the religious exercises or other functions as pastor and from in any manner disturbing or interfering with complainants, the congregation of said church, its pastor, officers or members, in the possession, use or enjoyment of said property and from bringing any other lawsuit in reference to the title or possession of said property, as prayed for in the bill filed in this cause to which reference is here made for greater certainty.

JOHN M. GAUT,  
*Solicitor for Complainants.*

Endorsed: Filed April 14, 1909, H. M. Doak, Clerk.

Upon April 14, the following order denying a restraining order was made and entered, viz:

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

In this cause the complainants having moved the court for a restraining order pending the hearing on the motion for a preliminary injunction, and said motion having been considered by the court, the same is denied.

Upon April 14, 1909, the following order fixing a date for hearing of the motion for temporary injunction was made and entered, viz:

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

In this case the complainants came by their solicitors and filed a motion for a temporary injunction restraining the defendants and

those associated with them from taking or attempting to take possession of the house of worship described in the baill, *v* called  
103 "Grace Church," city of Nashville or from interfering with the pastor of said church or his successor or successors in the conduct of religious exercises and from in any manner disturbing or interfering with the complainants, the congregation, its pastor, officers or members in the possession, use and enjoyment of said property and from bringing any other suit in relation to the title or possession of said property.

The court, on consideration, orders and directs that the application for the temporary injunction be heard in court on Saturday, April 24, 1909, at 9 o'clock a. m., when and where the defendants will appear and show cause, if any they have, why said injunction should not issue.

A copy of this order will be served on the defendant and if served eight days before the time fixed, said application will be heard at the time named or such other time thereafter as the court may direct.

104 Upon April 15, 1909, the following order was made and entered, viz:

C. R. SHARPE et al.  
v.  
E. W. BONHAM et al.

In this cause Margaret C. McDonald and her husband W. W. McDonald, both claiming to be citizens of the State of Louisiana, and Bell Monroe, claim- to be a citizen of the State of Kentucky, having applied for leave to be made complainants in the bill and complainants in the bill — moved for leave to amend the bill accordingly, such leave was granted.

And complainants W. R. Register and Maimie Register, his wife, having moved the court to dismiss the bill as to them, it is ordered and decreed by the court that the bill be dismissed as to them and that they cease to be complainants therein.

105 The following plea was filed, to-wit:

C. R. SHARPE et al.  
v.  
E. W. BONHAM et al.

Now come the defendants, E. W. Bonham, John M. Smith, J. H. Barbee, J. N. Hobbs, John B. Robertson, Thomas Allen, T. S. Hardison, Ben. E. White, and Hardy Copeland, pastor, officers and members of Grace Church Cumberland Presbyterian Church at Nashville, Tennessee, and for plea to the jurisdiction of the court say that the bill brought by the complainants does not present and proper controversy between citizens of different states, though the complainants have in their bill improperly and collusively made

and omitted parties complainant and parties defendant for the purpose of showing a diversity of citizenship and creating a case cognizable in this court.

Complainants do not allege a cause of action of which this court can take jurisdiction; nor do they allege such interest on their part in the alleged cause of action as entitles them to maintain this suit, but the reverse. In the prosecution of the alleged cause of action the other defendants, John M. Gaut, Isaac T. Rhea, and W. T. Hardison, who are alleged to hold the legal title of the property described and involved, are indispensable parties complainant, and yet, as these defendants aver, those persons are improperly and conclusively joined as defendants for the purpose of creating a case cognizable in this Honorable court. It is alleged in the bill that there are elders of Grace Presbyterian Church in the United States of America, in Nashville, Tennessee, who have the right to the control, use and possession of said property for the congregation of that church; and so they appear likewise to be indispensable parties complainant, and yet, as these defendants aver, their names are improperly and collusively withheld and they are improperly and collusively omitted from their proper position as parties complainant for the purpose of creating a case cognizable in this honorable court. It is also alleged in the bill that there are numerous members of the Grace Presbyterian Church in the United States of America, in Nashville, Tennessee, who must have as much, and on account of their residence in that city, more interest in the alleged controversy than the complainants named as such can have, and yet, as these defendants aver, the names of all such numerous members are improperly and collusively withheld and they are improperly and collusively omitted from their proper place as parties complainant for the purpose of creating a case cognizable in this honorable court. It is still further alleged in the bill that the Rev. W. T. Rogers is the pastor of Grace Presbyterian Church in the United States of America in Nashville, Tennessee, under the employment of the eldership of that church and that as such he has the right to occupy the pulpit and to conduct religious services for the congregation of that church, the elders and all the members residents and non-residents, in the house of worship in question, and yet, as these defendants aver, he is improperly and collusively omitted as a party complainant for the purpose of creating a case cognizable in this honorable court.

Following the attempt at union and merger alleged in the bill these defendants, and as they believe, about 125,000 other members of the Cumberland Presbyterian Church at large in Tennessee and other states declined to acquiesce in the said scheme and to become members of the Presbyterian Church in the United States of America or willingly to surrender to that church or to those former members of the Cumberland Presbyterian Church who did acquiesce in said scheme and become members of the Presbyterian Church in the United States of America, the houses of worship and other property previously conveyed as was that involved in the

present case, for the use and benefit of the particular local congregations of the Cumberland Presbyterian Church; whereupon certain of those persons who did acquiesce in said scheme, for themselves and as members of the Presbyterian Church in the United States of America and in the name of that church and for other members thereof, brought an original injunction bill in the Chancery Court at Fayetteville, Tennessee, against certain persisting Cumberland Presbyterians, to restrain them from interfering with the complainants in that bill and other members of the Presbyterian Church in the United States of America in the exclusive possession, use and control of the houses of worship at Fayetteville, McKenzie and Kenton, Tennessee, which houses of worship stood upon lots of ground conveyed as was that upon which the house of worship mentioned in the bill in this court, was, for the use and benefit in each instance of a particular local congregation of the Cumberland Presbyterian Church, to restrain them from doing other things not necessary to mention here and to have the chancellor adjudge the said scheme to be valid and binding on all persons who were members of the Cumberland Presbyterian Church at the time of its adoption. The style of that cause was Ira Landrith et al. v. J. L. Hudgins et al., two of the complainants, J. M. Hubbert and B. T. Fullerton being citizens of the State of Mis-

107      souri, and the other parties on both sides being citizens of the State of Tennessee. The complainants in that bill set up the *the* scheme of union and merger, alleging its validity and binding force in precisely the same language and in the same order that the scheme is now set up in paragraphs 2, 3, 4, 5, and 6 and in paragraph 7 to the close of the next to the last sentence on page 20 of the bill filed in the present case. The prayer in that bill was in substance the same as the prayer in the present bill to the extent that it sought to have the court adjudge that the said scheme of union and merger was legal and binding upon the ministry and membership of the Cumberland Presbyterian Church and effective in law to pass over the property of that church into the Presbyterian Church in the United States of America. The chancellor heard that case on bill, answer and proof and after due consideration dismissed the bill. On appeal of the complainants therein the Supreme Court affirmed the *the* decree of the chancellor for reasons stated in a written opinion delivered on the third day of April, 1909, a printed copy of which opinion is herewith filed as exhibit "A." In the decree of the Supreme Court entered in that cause it was adjudged among other things and in substance, "that the proceedings taken for the union of the Cumberland Presbyterian Church in the United States of America were unconstitutional and void and not effective to unite or merge the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America \* \* \*; that the Cumberland Presbyterian Church still remains a vital and independent organization, with a general assembly, synods and presbyteries, and that the defendants are truly identified therewith in doctrine, in polity and organic subordination; that the complainants are not so identi-

fied but have united themselves with another and different ecclesiastical organization; that the property involved in this suit, to-wit \* \* \* is vested in the defendant officers of the said Fayetteville Church for the use and benefit of the congregation at Fayetteville which adhered to the Cumberland Presbyterian Church and that the complainants have no interest therein."

A copy of that decree is herewith filed as exhibit "B" and copies of the bill and one of the answers in that cause are also filed herewith as exhibit "C" and "D", respectively. These defendants now say that the complainants in the present bill and the elders and members and pastor of the Grace Presbyterian Church in the United States of America in Nashville, Tennessee, have no interest in the house of worship described in the bill, unless and except and by virtue of said scheme of union and merger which has by  
 108 the court of last resort in Tennessee been adjudged unconstitutional and void; and yet, as these defendants aver, complainants bring their present bill for the obvious purpose of defeating the result of that decision and nullifying a rule of property established thereby in the State of Tennessee and they seek to accomplish that purpose by improperly joining and collusively omitting material parties in such manner as to present, if possible, a controversy between citizens of different states and for the purpose of creating a case cognizable in this honorable court, whose jurisdiction is invoked to re-open a controversy practically settled already by the Supreme Court of the State within whose borders the property involved is located. These defendants say that the complainants should not be allowed improperly and collusively to join and omit parties for the purpose of presenting a supposed and unreal controversy between citizens of different states and of thereby creating a case cognizable in this court. They say that when the parties actually made are properly placed on the record according to interest- the defendants Rhea, Gaut and Hardison, will be found on the same side of the controversy with the complainants and that there will then appear no proper controversy between citizens of different states; and that when the pastor and the elders and members of Grace Presbyterian Church in the United States of America, in Nashville, Tennessee, whose names are not given in the bill, are considered, it will be seen that they are also interested on the same side of the controversy with the complainants and that for that reason additionally there is a lack of that diversity of citizenship requisite to the jurisdiction of this honorable court. These defendants say therefore that this honorable court is without jurisdiction of the alleged controversy so improperly and collusively presented for the purpose of creating a case cognizable in this honorable court and with a view of re-opening therein a controversy which has already been settled so far as the legal principles on which it depends are concerned by the court of last resort in the State of Tennessee within whose bounds the house of worship in question is situated. They pray the judgment of the court whether they shall be compelled to make any further defense or answer to said

bill and they pray to be hence dismissed with their reasonable costs.

FRANK SLEMMONS,  
J. H. ZARECOR,  
W. C. CALDWELL,  
*Attorneys for Defendants.*

I certify that in my opinion the foregoing plea is well founded in point of law.

W. C. CALDWELL,  
*Attorney for Defendants.*

STATE OF TENNESSEE,  
*Davidson County:*

E. W. Bonham makes oath and says that he is one of the defendants and that the foregoing plea is not interposed for delay and that the same is true in point of fact.

E. W. BONHAM.

First day of May, 1909, sworn to and signed before me.

H. M. DOAK, *Clerk.*

By FLORENCE McLEAN, *D. C.*

Endorsed: File- May 1, 1909. H. M. Doak, Clerk.

109 The following stipulation to leave out exhibition "A"—  
Opinion of the Supreme Court of Tennessee in the case of  
Ira Landrith et al. v. Hudgins et al.—was filed, to-wit:

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

*Stipulation.*

In this cause it is agreed that the clerk of the court may omit from the transcript now being prepared for the Supreme Court of the United States the opinion of the Supreme Court of the State of Tennessee in the cause of Landrith et al. v. Hudgins et al.

JOHN M. GAUT,

*Solicitor for Appellants.*

FRANK SLEMMONS,

*Solicitor for Appellees.*

Endorsed: Filed July 11, 1910. H. M. Doak, Clerk.

110 The following is exhibit "B" to the plea filed herein, viz:

STATE OF TENNESSEE:

Be it remembered, that at a Supreme Court of Errors and Appeals, begun and held at the Capitol, in the City of Nashville, on the first



Monday in December, 1908, it being the seventh day of December, 1908, neither Judge attending, I adjourned Court until to-morrow morning at 9 o'clock.

JOE J. ROACH, *Clerk*.

The Clerk adjourned Court from day to day until Monday, December 14, 1908.

MONDAY, *December 14, 1908.*

Court met, pursuant to adjournment—present, Honorable Associate Justices W. K. McAlister, M. M. Neil, Jno. K. Shields, and B. D. Bell—when the following proceedings were had, to wit:

No. 1, Lincoln. Equity.

IRA LANDRITH et al.

VS.

J. L. HUDGINS et als.

APRIL 3, 1909.

Be it remembered that this cause came on to be heard upon a transcript of the record from the Chancery Court of Lincoln County, assignments of error, brief, reply brief, and argument of counsel, which argument was heard at the last term of this Court; upon consideration whereof, the Court is of opinion that the proceedings taken for the union for the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America were unconstitutional and void and not effective to unite or merge the Cumberland Presbyterian Church and the Presbyterian Church, U. S. A., and that the doctrines, and confession of faith, of the Cumberland Presbyterian Church are not in substantial accord with the doctrines and confession of faith of the Presbyterian Church U. S. A.; that the first subdivision of the plan of union which involved the surrender of the name and organization of the Cumberland Presbyterian Church was not submitted to the Presbyteries, but was left to be determined and was determined by the General Assembly of the Cumberland Presbyterian Church, which action of said Assembly was beyond its powers and void; that the Cumberland Presbyterian Church still remains a vital and independent organization, with a

General Assembly, Synods and Presbyteries, and that the de-  
 111 fendants are truly identified therewith in doctrine, polity and organic subordination; that the complainants are not so identified, but have united themselves with another and different ecclesiastical organization; that the property involved in this suit, to-wit, the property of the Fayetteville congregation, which many years before the attempted merger for a consideration of six hundred dollars, was conveyed "to the officers of the Cumberland Presbyterian Church and their successors in office for the use and benefit of the Cumberland Presbyterian Church," is vested in the defendant officers of said Fayetteville Church for the use and benefit of the congregation of Fayetteville, which adhered to the Cumberland Presbyterian Church, and the complainants have no interest

therein; and the use and occupation of said property by those complainants who have united with the Presbyterian Church U. S. A., is a violation of said trust.

And it further appearing to the Court that the equities of complainants' bill have been fully met and denied by the answer and proof of the defendants, it is therefore ordered, adjudged and decreed, for the reasons set forth in the opinion that their bill be dismissed.

It is further ordered, adjudged and decreed that the injunction heretofore granted in this cause be dissolved, and that the contempt proceedings in the case as to W. E. Dunnaway, and nine others be dismissed, and the cost of the contempt proceedings, and of the injunction, be paid by the complainants and their sureties on the original cost bond.

The Court is further of opinion, and so adjudges and decrees that the Chancery Court of Lincoln County was without jurisdiction over the lands and houses described in the bill situated in Carroll, Davidson and Weakley Counties.

It is further ordered, adjudged and decreed by the Court that the Complainants, Ira Landrith, J. M. Hubbard, B. P. Fullerton, W. A. Provine, G. H. Hogan, Thos. Bagley, J. L. Waggoner, R. B. West,

M. B. Malloy, J. T. Burns, R. J. Parnell, D. A. Burkhalter,  
112 J. P. Ridley, W. D. Hamilton, R. H. Brown, W. A. White,

W. F. Collins, J. H. Howell, H. T. Fullerton, C. A. Hudson,  
E. L. Jones, principals, R. Ed Feeney and R. L. Wallace, sureties,  
pay the cost of this cause, for which let execution issue.

Office of Clerk of the Supreme Court for the Middle Division of the  
State of Tennessee.

I, Joe J. Roach, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the decree of said Court, pronounced at its December Term, 1908, in case of Ira Landrith, et al. v. J. L. Hudgins, et als., as appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court at office, in the Capitol at Nashville, on this, the 26th day of May, 1910.

[SEAL.]

JOE J. ROACH, *Clerk.*

113 The following bill was filed in the Chancery Court of Lincoln County, Tennessee, at Fayetteville, and is filed as an exhibit to the plea to the jurisdiction in this cause, to-wit:

## EXHIBIT C TO PLEA.

IRA LANDRETH et al.

v.

J. L. HUDGINS et al.

To the Hon. Walter S. Bearden, Chancellor of the Fifth Chancery Division of the State of Tennessee, holding the Chancery Court at Fayetteville, Tennessee:

Ira Landreth, a citizen of Davidson County, Tennessee, J. M. Hubbert and B. P. Fullerton, citizens of the State of Missouri, W. A. Provine, a citizen of Maury County, Tennessee, G. H. Hogan, Thomas Bagley, J. L. Waggoner and R. B. West, citizens of Lincoln County, Tennessee, M. B. Molloy, J. T. Burns, R. J. Parnell, D. A. Burkhalter, J. P. Ridley and W. W. Hamilton, citizens of Carroll County, Tennessee, R. H. Brown, W. A. White, W. F. Collins, J. W. Howell, H. T. Fullerton, C. A. Hudson, and E. L. Jones, citizens of Obion County, Tennessee, said Hogan being the pastor and the other citizens of Lincoln County being the elders of what was the Cumberland Presbyterian Church at Fayetteville, Tennessee, and said Molloy being the pastor and the other citizens of Carroll County being the elders in what was the Cumberland Presbyterian Church at McKenzie, Tennessee, and said Brown being the pastor and the other citizens of Obion County being the elders of what was the Cumberland Presbyterian Church at Kenton, Tennessee, all of said pastors and elders and other complainants suing, not only in their own individual capacity, but also in their representative capacity as set forth in this caption and in this bill and all other ministers, officers and members of the Presbyterian Church in the United States of America, they being too numerous to be named herein, complainants, against J. L. Hudgins, P. F. Johnson, C. G. Tighlman, F. P. Campbell, C. R. Wade and W. R. Holmes, citizens of Obion County, Tennessee, T. H. Padgett, a citizen of Shelby County, Tennessee, Hardy Copeland, a citizen of Davidson County, Tennessee, and A. N. Eshman, soon to be a citizen of Davidson County, Tennessee, F. A. Seagle, a citizen of Hamilton County Tennessee, T. A. Havron, a citizen of Marion County, Tennessee, W. M. Robinson, a citizen of Texas, but supposed to be now in Madison County, Tennessee, Allen Foust, J. W. Smith, J. R. Granade, J. O. Dinwiddie and C. E. Large, citizens of Carroll County, Tennessee, W. A. Erwin, a citizen of Texas, but supposed now to be in — County, Tennessee, R. P. Moore, 114 G. C. Haynes, and J. W. Smith of Carroll County, who, with complainants Burns and Ridley, are the trustees of McKenzie Church, citizens of Lincoln County, Tennessee, Joseph H. Fussell, a citizen of Maury County, Tennessee; said Tighlman, Campbell, Wade and Holmes, with complainants White, Collins, Howell, Fullerton, Hudson, and Jones are the elders and present trustees holding the legal title of the Kenton property; and all other ministers, officers, and members of the Cumberland Presbyterian Church who

renounce or refuse to recognize the united church known as the Presbyterian Church in the United States of America, they being too numerous to name herein; C. T. Bishop, A. B. Winford, C. J. Farmwalt, renouncing elders and D. M. Goodner, a member of the Fayetteville church, Defendants.

1. Complainants would show unto your honor that in the latter part of the eighteenth century and beginning of the nineteenth century, a part of the territory now comprising Middle Tennessee and Kentucky was called the Cumberland Country. In the beginning of the nineteenth century there developed in this Cumberland country an extraordinary religious awakening which was afterwards known as the revival of 1800. This revival was largely originated and promoted through the Christian activity of a large number of ministers and laymen of the Presbyterian Church, who were afterwards known as the "revival party." The revival movement and especially its methods were opposed by some of the most conservative Presbyterian ministers and laymen of the Cumberland country. They soon became known as the "anti-revival party." There were not enough ministers in this section of country efficiently to carry on the revival work and *and* the emergency did not allow time to educate new ministers according to the Presbyterian standard of education. Devout laymen undertook, in some instances, under these peculiar circumstances, to explain and enforce the teachings of the gospel and their efforts proving successful, Cumberland Presbytery of the Presbyterian Church ordained them to the full work of the ministry.

These young men in their evangelical work naturally made prominent and emphatic the free agency of the individual in accepting the plan of salvation. In this way their attention was specially challenged to the teachings of the Westminster Confession of Faith as to the doctrines of election, foreordination, the eternal decrees and the correlated doctrines. These teachings were expressed in such language as to be capable of a construction that involved the doctrine of fatality. The ordination vows of the church required candidates for ordination to declare that they received and adopted the confession — faith as containing the system of doctrines taught in the holy scriptures. These young men claimed the right to make this declaration with the explanation that they did not understand the confession of faith as teaching the doctrine of fatality and if it did so teach, they accepted the confession with that doctrine excepted. The anti-revivalists objected to this qualified declaration. They appealed to the synod and the synod undertook to revoke the *the* ordinations. The presbytery denied the constitutional right of the synod to make the revocation and ultimately the synod dissolved the pre-bytery. The controversy continued until the revivalist party became satisfied that they could not, without sacrifice of principle, remain longer in the Presbyterian Church. Accordingly on the fourth day of February, 1810, at the residence of Samuel McAdow, a log cabin in Dickson County, Tennessee, three ministers, Finis Ewing, Samuel King, and Samuel McAdow, organized an independent presbytery, calling it Cumberland Presby-

tery and this was the beginning of the Cumberland Presbyterian Church.

Its founders hoped and expected that the presbytery thus formed would in a short time thereafter become reunited with the Presbyterian Church. They deprecated separate denominational existence, avoided it as long as possible, took the step with great reluctance and fondly cherished the hope that the separation would be of short duration. They expressly adopted the Westminster confession of faith and the presbyterian constitution and other doctrinal and ecclesiastical standards. The presbytery ordered that all candidates for licensure and ordination should adopt the confession "except the doctrine of fatality." This order of the presbytery is hereto annexed, marked exhibit "I." This exhibit and all others hereto annexed are made parts of this bill, but need not be copied. The presbytery grew until it was divided into three presbyteries and these presbyteries were in 1813 organized into a synod called Cumberland Synod. The synod in 1829 was divided into three synods and organized into a general assembly. From 1810 to 1813 Cumberland presbytery was the highest judicatory of the church and from 1813 to 1829 Cumberland Synod was its highest judicatory.

2. The best informed and most efficient members of the church, from its organization down to 1903, were convinced that the cause of Christianity would be promoted by the union of all the branches of the Presbyterian family in the United States. The highest judicatories of the church repeatedly participated in negotiations for an organic union with other denominations, notably with the presbyterian church, north, and the presbyterian church, south, and invariably the difference in creeds of the negotiating churches on the subject of predestination proved to be the one impediment in the way of union. Each attempt at a union was abandoned with reluctance and regret. The Presbyterian Church in the United States of America (the Presbyterian Church, North) took action which in 1903, resulted in a revision and construction of its confession of faith and removed all grounds for the contention that it contained doctrines of fatality. The great bulk of the ministry and membership of the Cumberland Presbyterian Church realized that no reason longer existed why the long desired union between these two churches should not take place and the general assemblies of the two churches, which convened in 1903, each appointed a committee to confer with each other on the subject of organic union. The action of the Cumberland Presbyterian assembly is set forth in a paper hereto annexed and made exhibit "II."

The Cumberland Presbyterian general assembly of 1903 exercised the highest degree of deliberation and caution in taking the step which it took. Its moderator retired from the chair, presented a preamble and resolution providing for the appointment of a committee on "Presbyterian Comity, Federation and Union \* \* \* who shall do all in their power to promote the closer federation and organic union of all the branches of the Presbyterian family and shall consider carefully any proposition that may come before it on

this subject." Said paper was referred to the assembly's committee on overtures, consisting of six ministers and eight elders. This committee unanimously reported in favor of the adoption of a resolution appointing a committee of nine, afterwards increased to eleven, to confer with such like committee as might be appointed by other Presbyterian bodies in regard to the "desirability and practicability of closer affiliation and organic union among the members of the Presbyterian family in the United States." The report of the committee is hereto annexed, marked exhibit "II." Very unusual and very precautionary methods were adopted for the selection of this committee in order that it might be truly representative in its character. The general assembly elected as chairman of the committee Rev. W. H. Black, D. D., president of Missouri Valley College, a man of superior ability, scholarship and integrity. The synods of the church were divided into four groups as nearly equal in commissioners as possible and each group, through its commissioners separately assembled, was authorized to elect one

117 minister and one ruling elder as members of the committee

The paper so providing for the selection of the committee is hereto annexed, marked exhibit "III." To the eight thus chosen three more were added to the assembly itself from the church at large, making with the chairman twelve of the church's ablest and most trusted ministers and elders, three of them being lawyers of ability. The members of the committee selected by groups of commissioners as above stated were as follows:

Chosen by the commissioners from the synods of Alabama, Mississippi, and Tennessee: Rev. Ira Landreth of Nashville, Tennessee, and elder E. E. Beard of Lebanon, Tennessee;

Chosen by the commissioners from Texas and Indianola synods: the Rev. S. M. Templeton, Clarksville, Texas, and elder M. B. Templeton, of Waxahachie, Texas;

Chosen by the commissioners from the synods of Arkansas, Missouri, and Kentucky: The Rev. B. P. Fullerton, D. D., St. Louis, Mo., and Judge W. E. Settle, of Frankfort, Ky.;

Chosen by the synods of Illinois, Indiana, Iowa, Kansas, Ohio, Oregon, Pacific and Pennsylvania: the Rev. D. E. Bushnell, D. D., Alton, Ill., and Pres. A. E. Turner, of Waynesboro, Pa.;

The general assembly of the Presbyterian Church in the United States of America, which convened in 1903, appointed a similar committee and the two committees met in the city of St. Louis, Mo., and devoted four days and nights to the consideration of the important questions submitted to them.

They appointed sub-committees which met two months later in the city of Cincinnati, for the arrangement of details and these committees remained in session three days. The final result was that the two committees agreed upon a joint report to be submitted by the separate committees, each to its own general assembly, recommending that a union between the two churches be consummated upon a basis set forth in the report. Said joint report is hereto annexed, marked exhibit "IV."

3. This report, after elaborate argument, was adopted by the



general assembly and referred to the presbyteries of the church by the adoption of two resolutions offered by Rev. S. M. Templeton, which are hereto annexed, marked exhibit "V." The vote on said resolutions was 162 in the affirmative and 74 in the negative.

At the time said resolutions were adopted the general assembly of the Presbyterian Church had not acted and as it could not be absolutely known that it would adopt the report the Cumberland  
118 Presbyterian assembly directed its moderator and stated clerk to submit the basis of union contained in the report to the presbyteries upon receiving final notification that the Presbyterian assembly had adopted the report.

In order that the presbyteries of the church might be fully informed in regard to the revised confession of faith referred to in the joint report the revised portions were printed in the minutes of 1903 of the general assembly of the Cumberland Presbyterian Church, a copy of which revisionary action is hereto annexed, marked exhibit "VI." The unrevised portion having for seventy-three years been part of the creed of the Cumberland Presbyterian Church, was already familiar to its members. A copy of said minutes was sent to every minister, candidate and licentiate in the denomination and to the clerk of every session as well as to the stated clerk of every presbytery and synod. The Presbyterian general assembly of 1904, also adopted by *by* a vote almost unanimous, said joint report and submitted the basis of union therein contained to its presbyteries for their approval or disapproval. It also adopted and submitted to its presbyteries for approval an amendment to the constitution of that church providing for the separation of the races in all of the church courts except the general assembly. A copy of said constitutional amendment is hereto annexed, marked exhibit "VII." The moderator and stated clerk of the Cumberland Presbyterian general assembly, pursuant to the orders of the assembly, addressed to every presbytery a communication submitting the basis of union to them for their action. A copy of said communication is hereto annexed marked exhibit "VIII."

The question as to whether the basis of union should or should not be adopted by the presbyteries was most exhaustively discussed for almost one entire year through the official organ of the Cumberland Presbyterian Church published in Nashville, called the Cumberland Presbyterian in which as much matter was published emanating from the opponents of the union as from the advocates of it and in addition the opponents of the union established as their organ a weekly periodical called the Cumberland Banner, which was largely circulated, many thousands of copies being sent out gratuitously. Both the champions and opponents of the measure flooded the church with circular literature and the questions involved were discussed by the presbyteries, synods and from the pulpit and in private conversation. A more universal and exhaustive discussion of any measure is practically impossible. The presbyteries made report to the general assembly through its stated clerk  
119 by means of printed blanks furnished to them by him, copy of which is hereto annexed, marked exhibit "IX." The reports were received by the clerk and submitted to the general



assembly of 1905, and were referred to a special committee. The committee made a majority and a minority report; both of them, however, concurred in finding that sixty presbyteries had approved the basis of union and fifty-one had disapproved of it, two of the 114 presbyteries taking no final action and one not reporting. Said majority report was adopted and its recommendations concurred in. A copy of the preamble and resolution reported by the committee and adopted by the assembly is hereto annexed, marked exhibit "X." By said resolution it was resolved by the assembly that it "does hereby find and declare that a constitutional majority of the presbyteries of the Cumberland Presbyterian Church have voted approval of the reunion and union of said churches upon the basis set forth in said joint report and does find and declare that said reunion and union has been constitutionally agreed to by the Cumberland Presbyterian Church and that the basis of union has, for the purposes of the union, been constitutionally adopted.

4. The general assembly of the two churches continued their respective committees on organic union, the Cumberland Presbyterian Assembly adding to its committee nine additional members, thereby increasing it to twenty-one. Eight of these new memberships were filled by persons who had up to this time opposed the union.

The Cumberland Presbyterian committee so enlarged and continued was directed to confer with the various boards, committees, organizations, and institutions of the Cumberland Presbyterian Church, "with reference to the adjusting of the details of union with the Presbyterian Church in the United States of America." This enlarged committee consisted of the following persons: W. H. Black, Chairman; J. A. McDonald; E. E. Beard; J. H. Miller; R. W. Binkley; R. G. Mitchell; R. L. Phelps; W. P. Bone; W. E. Settle; D. E. Buchnell; W. M. Crawford; R. M. Tinnon; M. B. Templeton; W. J. Darby; B. P. Fullerton; S. M. Templeton; A. E. Turner; John M. Gaut; Joseph E. Jones; T. W. Kellar; J. M. Hubbell, Secretary; Ira Landreth.

After two meetings the committees unanimously, excepting one Cumberland Presbyterian member, adopted a joint report, a copy of which is hereto annexed, marked exhibit "XI."

Each one of the two committees incorporated the joint report in a separate report to its assembly. The Presbyterian Assembly convened on the 17th day of May, 1906, at Des Moines, Iowa, and the Cumberland Presbyterian assembly conveyed on the same day in the city of Decatur, Illinois.

On the 16th day of May, 1906, an injunction bill was presented to the honorable W. C. Johns, judge of the circuit court of Macon County, Illinois, of which county Decatur is the county seat, seeking to enjoin the union committee of the Cumberland Presbyterian Church from presenting its report to the general assembly and seeking to enjoin the assembly from acting on such report. The defendants demurred to the bill. It was agreed between counsel that the report should not be reported or acted on pending the application for an injunction. The injunction was refused and the bill dismissed on the 23d day of May, 1906, and from

this action of the court the complainants appealed. Thereupon said committee presented its report and the same was acted on by the adoption of the following resolution:

"Resolved, That the foregoing report of the committee on fraternity and union be accepted and that the joint report on union and reunion contained in said report be adopted."

The vote upon said resolution was 165 in the affirmative and 91 in the negative. The Presbyterian assembly at Des Moines, was informed by telegram of this action and that assembly adopted said joint report and by telegram informed the Cumberland Presbyterian general assembly of the fact and of the further fact that the Presbyterian assembly had made the declaration provided for in section 14 of said joint report. Thereupon the moderator of the Cumberland Presbyterian assembly made the declaration that the basis of reunion was in full force and effect. A copy of said resolution is hereto annexed, marked exhibit "XII." After the final calling of the roll, the assembly adjourned by the adoption of the resolution hereto annexed, marked exhibit "XIII." Thereupon the moderator declared the assembly adjourned sine die as a separate assembly, to meet as part of the general assembly of the reunited church on the third Thursday in May, 1907, at 11 o'clock a. m., at the place chosen or to be chosen by the Presbyterian assembly.

The general assembly of the Presbyterian Church was invested by its constitution with legislative, executive and judicial authority; with power to decide all questions of law, doctrine or ecclesiastical polity coming before it in judicial cases or other controversies or propounded to it as abstract questions or arising in the exercise of its reviewing or superintending power over the whole church. Copies of sections of the constitution and confession of faith conferring such powers are hereto annexed, marked exhibit "XIV." The general assembly of 1903, by the adoption of report No. 1 of its

121 committee on overtures, made exhibit No. 2 to this bill and by adopting the joint report of 1904 and by its action in 1905, set forth in exhibit No. 10, and by adopting the joint report of 1906, clearly adjudged, impliedly and expressly, that the reunion had been constitutionally agreed to by the Cumberland Presbyterian Church and that the basis of union had been constitutionally adopted. By adopting the joint reports of 1905 and 1906, it decided that there existed substantial identity between the two creeds and this decision was concurred in by the presbyteries of both churches and the assembly of the Presbyterian Church. All the members of the Cumberland Presbyterian Church had impliedly and expressly promised when they became such members to abide by and support the rules and regulations of the church and submit to its constituted authorities so long as they continued members. The express promise is found in section 21, subsection 4, of the Directory for Worship, a copy of which is hereto annexed, marked exhibit "XV." All the members of the church, both ministers and laymen, were therefore under legal and moral obligations to acquiesce in the action of the general assembly and presbyteries in entering into the church union. This obligation was strengthened

by the decision of Judge Johns. The bill before him was filed by Joe H. Fussell, a citizen of Tennessee, and four other citizens of this state, A. N. Eshman and J. J. McClelland, of the State of Mississippi, Thompson Ashburn and two others of the State of Indiana, and fourteen citizens of the State of Illinois, all alleged to have been members of the Cumberland Presbyterian Church. It was filed in their own -half and in behalf of all other members of said Church who were opposed to the union, alleged to number more than one hundred thousand and alleged to be too numerous to be named individually as complainants to the bill. It was insisted in the bill that the general assembly and presbyteries of the church had no power to enter into the union agreement and that the agreement was null and void. It was further insisted that the creeds of the two churches were radically different and therefore that to carry over the property of the Cumberland Presbyterian Church into the united church would be to commit a breach of trust. It was further alleged that although the adoption of the joint report of 1906 would give no validity, yet that its adoption would cast a cloud upon the title to 2,922 houses of worship owned by the Cumberland Presbyterian Church in the various states of the union; upon its publishing house and equipments located at Nashville, Tennessee; its home for disabled ministers and widows and orphans of deceased ministers, located at Evansville, Indiana; and upon its other general property; that a multiplicity of lawsuits would be occasioned by such  
122 cloud and the work of the church greatly embarrassed by the contentions and confusion resulting from the supposed union. Complainants had made defendants to their bill, or attempted to make defendants, J. B. Hail, the retiring moderator of the assembly, and every commissioner, whether principal or alternate, elected by the various presbyteries to the general assembly of 1906; and it also attempted to make defendants every member of the committee on union.

Quotations from said bill sufficient to show its general character, are hereto annexed, marked exhibit "ZXL." The bill had been filed in a court of their own choosing and had been dismissed upon its own averments. Judge Johns delivered an elaborate written opinion which will be filed, if necessary, during the progress of this cause. He held that the general assembly, the highest court of the church, had jurisdiction to decide all questions arising in the construction of the organic law of the church and all questions of doctrine; that the assembly had decided that the union had been constitutionally agreed to and had further decided that there was substantial identity between the two creeds. He further held *held* that these decisions were binding upon every member of the church and upon the civil courts. His decision should at least have been treated by the complainants in the bill as *prima facie* correct. The general assembly had for seventy-seven years been settling all questions of ecclesiastical law and doctrine and had filled a volume of digest with its deliverances. That it has such jurisdiction is shown by exhibit No. 14 to this bill. That it has decided correctly in the present instance is perfectly manifest. Complainants are advised and believe

that the assembly and the presbyteries would have had the implied power to form the union had not the constitution expressly granted it, but they are advised and believe that the constitution does expressly grant powers which amount to the power to form the union. Moreover, they are advised and believe that the sovereign power of the church was vested in the general assembly and the presbyteries. The assembly and presbyteries made the confession of faith, constitution and other ecclesiastical standards. Never in the entire history of the denomination have the people undertaken to make or amend any of these standards, except through their representatives in these courts. The membership of the church includes men, women and children—some children not exceeding six to eight years of age. As shown by exhibit No. 15, persons joining the church are not expected to or required to avow their belief in the confession of faith. The result is they naturally are not versed in creeds or constitutional questions as are the ministry and elders, who are  
123 required in their ordination to avow such belief and whose official duty requires them to pass upon constitutional and creedal questions in the courts of the church.

The vows of these ministers and elders are shown in exhibits Nos. "XVII and XVIII," hereto annexed. Complainants are therefore advised and believe that the general assembly and presbyteries, in the exercise of the sovereign power, may repeal or change the organic law, either by express action or impliedly, by doing a sovereign act inconsistent with the constitution.

For about one hundred and fifty years the presbyterian conventions have been construed as granting, or not withholding, the power to form such unions. Instances in which such power has been exercised or asserted are set forth in exhibit No. "XIX," hereto annexed.

Complainants are therefore advised and believe that the decisions of the assembly in question were and are correct, but whether correct or not, they are binding upon every church member and cannot be reviewed by the civil courts and complainants rely on such decisions as conclusive.

6. Notwithstanding these obligations resting upon the opponents of union to abide by the action of the church's constituted authorities and respect the opinion of a civil court to which they had voluntarily submitted the questions involved, a number of them, said to be about ninety, who had been members of the general assembly of 1906, who answered to the final roll call in that body, and remained in it until its final adjournment, assembled in the hall of the Grand Army of the Republic, in the city of Decatur, Illinois, an hour or two after the adjournment of the general assembly and undertook to assume that they, a minority of the commissioners, constituted the general assembly of the Cumberland Presbyterian Church assumed to continue its sittings though it had adjourned until May, 1907; assumed that the offices of the assembly had become vacant and proceeded to elect the defendant, J. L. Hudgins, moderator and the defendant, T. H. Padgett, stated clerk. They undertook to rescind the action adopting the joint report of 1906. They assumed further that all the offices of all the boards and permanent com-

mittees of the church had become vacant and proceeded to fill such supposed vacancies by the appointment of new members and officers, ignoring the requirements of the charters of the boards as to filling vacancies. They assumed that all of the houses of worship of the denomination had passed under their control, as well as the publishing house and other general property of the church; they assumed that all who refused — recognize their authority as the general assembly of the church were revolutionists and seceders; and that all ministers, officers, members, synods, presbyteries and congregations who recognized their authority constituted an organic continuation of the Presbyterian Church and undertook to appropriate and use the name of the church in order more effectually to palm off upon uninformed people this false and deceptive contention. They undertook to adjourn the assembly of the church to meet on the third Thursday in May, 1907, in Dickson County, Tennessee, on the ground where the church was organized in 1910, although the land is now owned by the united church. They assumed to own and to have the right to manufacture and sell the confession of faith of the Cumberland Presbyterian Church, although the unexpired copyright to it passed by operation of law to the united church when the union was consummated. Under the organic law of the Cumberland Presbyterian Church the presbyteries were authorized to elect commissioners to attend only one session of the general assembly. This law made no provision for a called session of the assembly except where it failed to meet upon its own adjournment. When the assembly of 1906 adjourned on the 24th day of May, 1906, the term of office of every commissioner expired. There ceased to be any commissioners to sit in a general assembly; no one had power to call a meeting of the assembly and the ex-commissioners could not, even by unanimous vote, have set aside the adjourning order. No attempt was ever made to set it aside, nor was any attempt made to call a meeting of the body. The minority of ex-commissioners who assembled in the Grand Army hall, as above stated, was but a voluntary assemblage of ministers and elders, with no authority whatever to represent any presbyteries or in any way whatever bind the church. In assembling they were actuated by a common purpose and combined and conspired to accomplish that purpose. Their purpose was to repudiate the action of the general assembly and presbyteries in entering into the union agreement and adopting the basis of union and to renounce the reunited church which resulted from the union. The further purpose was to make the people of the church believe that that assembly was in law and in fact, a continuation of the general assembly of the church and that all synods, presbyteries, sessions, boards of deacons, and congregations, and that all who recognized the general assembly of the united church would be mere revolutionists and seceders and would forfeit all property rights and other rights as judicatories, ministers, officers, or members of the church. They undertook to lay plans and create agencies to induce, by argument, persuasion and other

means, which will hereafter be referred to, as many as possible of the ministry and membership to accept as true their representations, renounce the united church and become associates and co-workers in the combination. They appointed a legal committee, of which Joe H. Fussell was made chairman for the purpose of advising the people as to the principles of law involved. Mr. Fussell had assumed to be their legal adviser for a year or more previously and had been made chairman of a committee to conduct the opposition to the union. A large number of the opponents of union had been accustomed to look to him for such legal advice and he had, moreover, presided over nearly all, if not all, of their conventions and causes, and, in fact, was the leader of the opposition. This legal committee has sent forth throughout the length and breadth of the denomination a printed circular declaring the law to be in accordance with the assumptions of the Grand Army hall convention as hereinbefore set forth. The committee declares, in substance and effect, that any part of a congregation, no matter how small, the minority and regardless of the attitude of the session, which adheres to the Grand Army convention, have the right to declare vacant the office of every elder or deacon who is loyal to the reunited church and fill his place with a renouncer; that even a minority of a session who renounce the reunited church have a right to declare vacant the pastorate of their church, provided such pastor is loyal to the united church and fill his place with a renouncing minister; that the members of a presbytery loyal to the grand army convention have a right to exclude from membership in the presbytery and participation in its proceedings even a majority of the members who are loyal to the united church; that such renouncing sessions have the power to take exclusive possession and control of the houses of worship and hold them for services conducted by renouncing ministers, excluding all others, if they saw fit to do so.

Said convention also appointed an advisory board of which A. N. Eshman was made chairman, for the purpose of giving advice to ministers and members of the church as to their duties and otherwise carry out the purposes of the convention. Said Eshman issued and circulated throughout the church a printed circular urging the opponents of union to hasten the division of the church as much as possible, lining up the renouncers as against the loyal members, organizing the former where they were in the minority and failed to include the officers of judicatories, urging them to get rid of loyal pastors, declaring that it was better to have no pastor than one who was loyal to the united church and urging them to contend for all, their

property rights as declared by the legal committee. Under 126 the authority of the convention, travelling superintendents, or canvassers, were appointed and compensated for travelling about over the State of Tennessee or in certain presbyteries, for the purpose of increasing dissatisfaction with the union, augmenting the ranks of the renouncers, hastening divisions and change of pastors and instigating contentions over church property. To the bill filed at Decatur, Illinois, by the opponents of union, there was exhibite- a paper purporting to set forth the present creed of the



united church. This paper consisted exclusively of quotations from the old Westminster confession of faith, without a single word taken from the revisionary action of 1903. A copy of said exhibit is hereto annexed, marked exhibit No. "XX." The opponents of union have recently filed a bill at Atlanta, Georgia, and exhibited thereto a paper similar to it, if not a verbatim copy of the one filed at Decatur. Throughout the length and breadth of the church the employed and voluntary champions of the renunciation are telling the people in public addresses, in private conversations and published statements that no change whatever has been made in the creed of the church and in support of this contention read from or quote from the old confession without a word of the revisionary action. It has always been the boast of the Cumberland Presbyterian Church that it was not sectional. It had religion enough to pass through the storms of civil war and the perils of reconstruction without a division and has ever studiously labored and with marked success, to suppress sectional feeling. Nevertheless these champions of the renunciation have made thousands of people believe that this was not a mutual union of two denominations but a disorganization of the Cumberland Presbyterian Church and absorption of it by the Presbyterian Church and they have told these people that the union people were going to take from them all their church property and give it to a "northern church," or a "Yankee church," and that the united church would force upon them an admixture of negroes and white people in all the congregations of the south and in all of the judicatories of the church and even force upon them social equality between the races. These statements are made in the face of the amendment to the Presbyterian constitution providing for separation of the races wherever either race desires it. One Hardy Copeland, a Cumberland Presbyterian minister who resided in Texas, was employed to canvas in Tennessee in the interest of the schism and for weeks beset the congregations in Nashville, seeking to stir up divisions and dissensions. He not only made the deceptive statement referred to above but told the people even in public addresses that the presbyterians in their confession of faith claimed that every preacher had the power to forgive sins in the same manner that such power is claimed for the Pope of Rome. To support this monstrous contention he read a section of the confession of faith of the united church which stood word for word in the Cumberland Presbyterian confession of faith from 1810 to 1883 and which had attached to it a foot note explaining that this section meant nothing more than that the visible church had the power to receive persons into its membership and exclude them therefrom, a construction of the passage which had been established and recognized for centuries. It was not surprising therefore that these misrepresentations and appeals to prejudice should have precipitated divisions and organized strife to the great detriment of the church and to the discredit of Christianity. Presbyteries and sessions have been called together by the renouncers for the express purpose of precipitating a lining up between those who adhered to and recognized the grand army convention as the general assembly of the church



and those who recognized the united church. Relations between pastors have been broken up, the collections of the churches are being claimed by antagonistic boards, causing thousands of people to abstain from contributing at all. The funds collected and paid over to the agencies of the convention it is believed are being used to pay the salaries and travelling expenses of their canvassers hereinbefore referred to, although they were contributed for the cause of home missions, foreign missions or some other religious purpose. The Cumberland Presbyterian Church, prior to the union, established a number of missions in Japan, China and Mexico, employing missionaries to conduct the same, and paying the expenses of the missions. It also established a large number of missions in the United States, which it was in like manner sustaining. It was engaged in the publication of a large number of periodicals and books for the maintenance of which it was largely dependent upon the patronage of the members of the church. It raised money to be loaned to weak congregations for the erection of houses of worship, to maintain its candidates for the ministry while they were educating themselves and for maintaining superannuated ministers and the widows and orphans of deceased ministers. To maintain all this missionary and charitable work the church was, and the united church is, dependent upon the voluntary contributions of the membership of the church and to maintain the publishing work is dependent upon their patronage or voluntary contributions. All of this ecclesiastical work, which has cost and still costs, hundreds of thousand of dollars, is still being carried on by the united church. By the use of

128 the name Cumberland Presbyterian and representation of the renouncers that they are the continuation of the old church, thousands of members have been drawn away from the united church and large amounts of contributions of money and large numbers of patrons of periodicals have been diverted and are now being diverted from the Cumberland Presbyterian department of the united church work and turned into the hands of the renouncers.

A multiplicity of lawsuits over houses of worship, funds in presbyterial treasuries, record books, endowment funds, parsonages and other church property are absolutely unavoidable and imminent. The legal committee appointed by the Decatur convention was authorized and directed to provide for this litigation, the convention foreseeing that the carrying out of their plan would inevitably bring it about. Proceedings more discreditable than litigation are already taking place. At Fayetteville, Tennessee, the adherents of the convention belonging to the Cumberland Presbyterian congregation at that place, in the afternoon of Sunday, July 15, 1906, assembled in the courthouse and assuming that the offices of all loyal elders (there in number out of four elders) had become vacant proceeded to elect three renouncers in their places. The same course was taken as to deacons. These three newly elected and ordained elders, together with the only old elder who renounced the union, came into the church Monday night where the Rev. G. H. Hogan, pastor of the church and moderator of the session, with the three loyal elders, was holding a session meeting. These four renouncers

assumed to be the session of the church and demanded possession of the house and keys. This being refused, they proceeded to fasten all the windows, lock all of the doors, retain the keys and two or three of their number and also three members of the loyal session, remained all night, thus inaugurating a contest of endurance for the possession of the property. The renouncing elders left sometime before nine o'clock on Tuesday morning without any explanation of their purpose. On Saturday, July 21, some person in the interest of the renouncing session, entered the building, as complainants are informed and believe, by force, fastened the windows, locked or barred the doors, and have excluded the pastor and loyal elders and congregation from the house of worship. At Bowen's Chappel, in Humphreys County, Tennessee, one of the minority, or renouncing, elders, surreptitiously got possession of the key of the house of worship, barred and locked the doors and windows and when the pastor came on Sunday to hold service a large crowd was present unable to gain admission. On invitation, the pastor and his auditors

129 repaired to a neighboring church where the service was held.

Public indignation caused a surrender of the keys, but how soon and in what way the contest will be renewed can only be conjectured. Similar steps have been taken at McKenzie, Tennessee, and similar troubles have arisen at Dyer and other places. At both places the possession of the house of worship has been wrested from the possession of the complainants, the elders loyal to the united church.

At Kenton, Tennessee, the pastor of the church went to the house of worship at 10:30 o'clock a. m. on Sunday for the purpose of holding the 11 o'clock service and found defendant R. F. Johnson, a renouncing minister sitting in his pulpit. The latter arose and declared that since the pastor was a Presbyterian preacher he had no right to preach in that pulpit and declared that he himself would conduct the service. The performance having been previously advertised a large and morbid crowd was present to witness it. The pastor with his hearers retreated to the Methodist church, where their worship was conducted. This statement as to what took place is made upon information considered by complainants to be reliable and they believe it to be true. These are but samples of what is taking place and will continue to take place unless prevented by the injunctive power of this court. It is evident also that a large number of suits will be originated in the State of Tennessee within the next few weeks involving contests over church property. Because of the present inability of the contending forces to settle their disputes it is to the interest of both parties and the entire people of the State that they be settled by some judicial tribunal as speedily as possible. The defendants in their bill filed at Decatur, Illinois, insisted that the adoption of the joint report would cast a cloud upon the title to 2,922 houses of worship and upon parsonage and endowment funds held by various congregations in the church and upon the publishing house, Thorton's Home, certain institutions of learning and other property belonging to the denomination. Complainants are advised and believe that the adoption of the union

reports vested the title to all the church property in the united church. They are further informed and believe that *that* the contention on the part of the defendants that the union agreement is a nullity casts a cloud on the title to such property to the extent that credence is given to such contention. Complainants therefore agree with defendants that there is a cloud on the title which a court of equity can and should remove. Defendants also insisted in said bill that the adoption of said report would give rise to a multiplicity of lawsuits which a court of equity could and should prevent  
 130 by injunction. Agreeing with them, complainants admit that the adoption of said report is giving rise and will continue to give rise to numerous suits, which should be prevented. These suits, depending for their determination, as they must, upon legal questions arising upon the construction of printed documents, must necessarily involve the same questions of law and facts. Complainants have endeavored to exhibit to this bill a copy of every document believed to be material to any question involved in the controversies. If they have failed to exhibit any document that is material they stand ready to do so. They are thus endeavoring to facilitate a speedy hearing of this cause upon demurrer if possible.

Complainants are further advised that and believe that the decisions of the highest ecclesiastical court of the church, held to be correct and conclusive by a civil court of defendant's own choosing and upon the allegations of their own bill, should be treated as at least *prima facie* correct for the purposes of preliminary injunction and that the status called for by those decisions should be faithfully preserved until the final decision of this cause.

It would be practically impossible to describe every piece of real estate and other property involved in these controversies and complainants are informed and believe that it is not necessary; nevertheless, they hereto annexed, marked, exhibit "XXI a, b, c, and d," copies of the deeds under which are held the houses of worship at Fayetteville, McKenzie and Kenton, and the publishing house at Nashville.

Complainant Ira Landreth is the moderator of the Cumberland Presbyterian Church general assembly which convened in 1906, and as such will officiate in the general assembly of the united church in 1907. Complainant J. M. Hubbert is in like manner the stated clerk of the Cumberland Presbyterian assembly and is assisting in the discharge of the duties of stated clerk of the united assembly. Complainant W. A. Provine is the president of the board of publication of the Cumberland Presbyterian Church, a corporation existing under the laws of Tennessee and having its place of business at Nashville, Tennessee, and whose charter is found in the Acts of the State of Tennessee, 1859-60, page 518, P. Dig. 460. Complainant B. P. Fullerton is the president of the board of missions and church erection of the Cumberland Presbyterian Church, a corporation existing under the laws of the State of Missouri and having its place of business in St. Louis. Said Landreth and said Hubbert are also, respectively, the chairman and the secretary of the committee

on pastoral oversight appointed by the assembly of 1906 and which was "authorized, from time to time as occasion may require, to employ such legal counsel as in its judgment may be necessary properly to defend or prosecute any litigation which may arise in any part of the church during the ensuing year and to concert such other measures as it may deem necessary to promote the interests of the church.

Complainants Thomas Bagley, J. L. Waggoner and R. B. West are the three of the four elders of the Cumberland Presbyterian church at Fayetteville, Tennessee, now of the Presbyterian Church in the United States of America, who are loyal to the united church and recognize the same; and complainant G. H. Hogan is the pastor of that church and recognizes the union. The pastor and the elders of the church at McKenzie, Tennessee, who adhere to the united church are complainants M. B. Molloy (pastor) and J. T. Burns, R. J. Parnell, D. A. Burkhalter, J. T. Ridley and W. W. Hamilton, (ruling elder). The renouncing elders of said congregation are J. W. Smith, J. R. Grenade, J. O. Dinwiddie, and C. E. Larde. The pastor and elders of the congregation at Kenton, Tennessee, who recognize the united church, are complainants R. H. Brown (pastor), W. A. White, W. F. Collins, J. W. Howell, H. T. Fullerton, C. A. Hudson, and E. L. Jones.

Defendant J. L. Hudgins, as before stated, was elected moderator of the pretended general assembly of the Cumberland Presbyterian Church, held in the Grand Army hall at Decatur, Illinois. Defendant T. H. Padgett was elected its stated clerk. A. N. Eshman was appointed by said convention chairman of its advisory board and defendant F. A. Seagle, president of its board of publication. T. A. Hayron is the editor of the organ of the renouncers and one of their leaders. W. M. Robinson, a citizen of the State of Texas, is one of the paid cancessers now working in Tennessee in the interest of the renunciation. Defendants Allen Foust and P. F. Johnson and W. A. Erwin are active and prominent champions and promoters of the renunciation in the state. Defendants ———— claim to be elders of the church at Fayetteville, who renounce the united church and who created the disturbance in that church heretofore set forth in this bill. Defendants C. F. Tighlman, F. P. Campbell, C. R. Wade and W. R. Holmes are the renouncing elders of the church at Kenton, Tennessee. Title to the house of worship of the Cumberland Presbyterian Church, said to number over 2900 and to the parsonages, are with few exceptions held by trustees. The property of the boards and institutions of learning are held by themselves as corporations. The trust declared in deeds for churches and parsonages

are generally in substance that the property is to be held as  
 132 a house of worship (or manse) for the named congregation  
 "of the Cumberland Presbyterian Church." The present trustees under the deed for the Fayetteville property are ————; those for the McKenzie property are ————; and those for the Kenton property are the Kenton elders named in the caption of this bill. Complainants are advised and believe that said union has been legally consummated; and that as a result of such

union whatever title, legal or equitable, to any property, or right to control, possess or use the same was possessed by any of the members, judicatories or other ecclesiastical agencies of the Cumberland Presbyterian Church, passed by operation of law to the members or corresponding judicatory or agency of the united church. They are further advised and believe that all the members, including ministers, of the Cumberland Presbyterian Church who renounce the united church cease to be members of said church and that said renouncing ministers vacate their positions as pastors and members of presbyteries and synods and that all such renouncing officers, members of boards, of committees, or persons in other ecclesiastical positions, vacate their respective offices or positions and that all such ministers, officers and members relinquish all their rights in, or in relation to, all church property. Complainants are further advised and believe that they have a right to file this bill in order that all doubt may be removed as to the effect of the action of said two churches in forming said union upon said church property and to quiet the possession of those ecclesiastical authorities who are lawfully in possession of such property and to restore possession to those who have been unlawfully dispossessed.

The Presbyterian Church in the United States of America is an unincorporated voluntary religious society, as was also the Cumberland Presbyterian Church. Both of said denominations existed under the presbyterian form of government, having a gradation of church courts consisting of session, presbytery, synod and general assembly, each having certain control of the others in the order named, the general assembly being the highest church court. The constitutions of said churches and their doctrinal and other ecclesiastical standards, all of which exist in printed book form, are too voluminous to be copied, but are made exhibits to this bill, marked A and B. Complainants were all members and communicants in the Cumberland Presbyterian Church and as the result of the union are now communicants in the united church, the Presbyterian Church 133 in the United States of America. The membership of the

Cumberland Presbyterian Church who adhere to the united church are believed to number largely more than one hundred thousand and the membership of the united church is more than one million. Said membership is scattered over a number of states and is continually changing by accessions, dismissions and deaths. The membership of either or both churches is too numerous to make complainants by name and for other reasons mentioned it is impracticable to do so. Complainants therefore pray to be permitted to file this bill in their own behalf and in behalf of all the members of the Presbyterian Church in the United States of America and especially in behalf of those members of said church who formerly belonged to the Cumberland Presbyterian Church and who now adhere to the united church.

The members of the Cumberland Presbyterian Church who antagonize the union and have renounced the united church number many thousands and are likewise scattered through a number of states and are fluctuating by changes from one presbytery to an-

other and it is therefore impossible to make them defendants by name. Those who are named as defendants to the bill are eminently representative in their character, official position and relation to the renunciation movement and to those engaged in it and associated with it.

Complainants therefore pray that all of the ministers, officers, members, boards, committees, employees and agents of every character and description who are or claim to be part of the so-called Cumberland Presbyterian Church be made defendants to this bill and be represented by the named defendants herein enumerated and that said named defendants be authorized and required to defend for themselves and their unnamed co-defendants.

7. The premises considered complainants pray that the defendants named in the caption of the bill be made such by the service of process and by publication, if necessary, the process returnable to the earliest practicable rule day; that they be required to make defense to this bill, but that if they answer the same the answer shall not be upon oath, the oath being expressly waived; that on final hearing decree be rendered declaring that said union between the churches was legally formed and is valid; that all of the property rights possessed by the Cumberland Presbyterian Church or any of its judicatories or congregations passed by operation of law as a result of the union with said judicatories or congregations into the united church; that all ministers, officers and members belonging

to what was the Cumberland Presbyterian Church and adhering to the Presbyterian Church in the United States of America constitute the true and lawful members of the various congregations, sessions, boards of deacons of the various congregations, and that all who renounce or shall renounce said united church have ceased, or will cease, to be members of the congregations, sessions, boards of deacons, presbyteries, or synods which formerly constituted the congregations, boards of deacons, presbyteries or synods of the Cumberland Presbyterian Church; that all elders and deacons so renouncing the united church have or will cease to be elders or deacons in said congregations and cease to have any right to control or hold possession of any property belonging or appertaining to their respective congregations; that all pastors of churches so renouncing the united church have or will vacate their respective pastorates; and that all such renunciators will forfeit all their rights of property and all other rights and privileges as members, officers or ministers in said judicatories. Complainants especially pray that the elders loyal to the united church at Fayetteville, McKenzie, and Kenton be placed in possession of the church property at said places, their rights be declared and their possession protected.

Complainants pray that your honour will grant a preliminary injunction, enjoining all ministers, officers and members of the Cumberland Presbyterian Church who repudiate and renounce the action of the general assembly and presbyteries of said churches in agreeing to and forming a union with the Presbyterian Church in the United States of America, or who renounce the united church resulting from said union, known as the Presbyterian Church in



the United States of America, together with all their associates, confederates, agents, and representatives and that said persons be enjoined from doing the following things, viz:

1. From interfering with or molesting the pastors, elders, deacons, church members or other ecclesiastical agencies who adhere to and recognize said united church, in the use, enjoyment, possession and exclusive control of all houses of worship, parsonages, endowment funds or other property or effects which belonged to the Cumberland Presbyterian Church or any of its boards, committees, judicatories, congregations or institutions or are held in trust for them.

2. From instituting or prosecuting any suit at law or in equity for the purpose of asserting any right which they, or any of them, may claim to have, possess, control or use any of said property.

3. From using the name of the Cumberland Presbyterian Church as the name or any part of the name of any of their organizations, congregations, sessions, presbyteries, synods, general assemblies, boards, committees, or other ecclesiastical judicatories, institutions or agencies, in connection with the claim, on the part of said judicatory, organization or agency, or any one acting for it, that it is a judicatory, organization or agency of the original Cumberland Presbyterian Church as organized in 1810.

4. From manufacturing or selling the confession of faith of the Cumberland Presbyterian Church or any other of its copyrighted books, pamphlets or publications.

5. Complainants pray that writs of injunction be issued and as far as practicable served upon the defendants named herein and that, in addition thereto the injunction herein granted be published in such newspapers throughout the State as may be designated by complainants or the court and that further publicity be given it by the distribution of printed copies thereof.

6. Complainants further pray that should this injunctive order be disobeyed by any of the parties herein enjoined, attachments issue against them and that they be dealt with according to law.

7. Complainants further pray that upon final hearing the injunction herein prayed be made perpetual.

Complainants pray for all such other and further relief as is suited to this cause.

This is the first application for the injunction herein prayed for.

JOHN M. GAUT AND  
M. W. WOODARD,  
*Solicitors for Complainants.*

STATE OF TENNESSEE,  
*County of Davidson, ss:*

Before me, John H. De Witt, a notary public in and for said county this day personally appeared Ira Landreth and G. H. Hogan, complainants in the foregoing bill and made oath in due form of law that the facts stated in said bill as of their knowledge are true and those stated as upon information and belief they believe to be true.

IRA LANDRETH.  
G. H. HOGAN.



Sworn to and subscribed before me, this the 20th day of July, 1906.

[SEAL.]

JOHN H. DE WITT,  
*Notary Public.*

To the clerk and master of the Chancery Court at Fayetteville, Tennessee:

Upon complainants executing bond in the sum of five hundred dollars conditioned as required by law, you will issue the writs of injunction as prayed for in complainants' bill.

JNO. W. CHILDRESS,  
*Judge Tenth Judicial Circuit.*

July 21, 1906.

136 The following exhibit "D" to the plea to the jurisdiction was filed, viz:

IRA LANDRITH et al.

v.

J. L. HUDGINS et al.

The joint and separate answer of J. L. Hudgins, A. N. Eshman, J. H. Fussell, T. A. Havron, F. A. Seagle, and Hardy Copeland to the bill filed against them and others by Ira Landrith and others in the Chancery Court at Fayetteville, Tennessee, on the 21st day of July, 1906.

These respondents, saving and reserving to themselves the benefit of all proper exceptions and objections to the said bill on account of errors and insufficiencies therein and especially on account of misjoinder of parties, both complainant and defendant, for answer to so much and such parts thereof as they are advised it is material for them to answer, say:

The Cumberland Presbyterian Church was organized in Dickson County, Tennessee, February 4th, A. D. 1810. It was an outgrowth of the great revival of 1800, one of the most powerful revivals that this country has ever witnessed. The founders of the church were Finis Ewing, Samuel King and Samuel McAdow. They were ministers in the Presbyterian Church who rejected the doctrine of election and reprobation as taught in the Westminster Confession of Faith.

The Cumberland Presbytery, which was constituted at the time of the organization of the church and which originally consisted of only three ministers, was in three years sufficiently large to form three presbyteries. These presbyteries, in October, A. D. 1813, met at Beech Church in Sumner County, Tennessee, and constituted a synod. This synod at once formulated and published a "Brief Statement," setting forth the points wherein Cumberland Presbyterians dissented from the Westminster Confession of Faith. They were as follows:

1. That there is no eternal reprobates;

2. That Christ died not for a part only but for all mankind;
3. That all infants dying in infancy are saved through Christ and the sanctification of the spirit;
4. That the spirit of God operates on the world, or as co-extensively as Christ has made atonement, in such manner as to leave all men inexcusable.

At this same meeting of the synod, too, a committee was appointed to prepare a Confession of Faith. The next year, A. D. 1814, 137 at Suggs' Creek Church, Wilson County, Tennessee the report of the committee was presented to the synod and the revision of the Westminster Confession of Faith which they presented was unanimously adopted as the Confession of Faith of the Cumberland Presbyterian Church. Subsequently the formation of the General Assembly took place. This judicature, at its first meeting, A. D. 1839, at Princeton, Kentucky, made such changes in the form of government as were demanded by the formation of this new court.

In compiling the confession of faith the fathers of the Cumberland Presbyterian Church had one leading thought before them and that was to so modify the Westminster Confession as to eliminate therefrom the doctrine of universal foreordination and its legitimate sequences, unconditional election and reprobation, limited atonement and divine influence correspondingly circumscribed. All the boldly defined statements of the doctrine objected to were expunged and corrected statements were made. But it was impossible to eliminate all the features of hyper-Calvinism from the Westminster Confession of Faith of *Faith* by simply expunging words, phrases, sentences, or even sections and then attempting to fill in the vacancies thus made by corrected statements or other declarations, for the objectionable doctrine with its logical sequences pervaded the whole system of theology formulated in that book.

The compilers knew this and they also knew that a book thus made must necessarily have some defects. Still, they felt assured that they had prepared one which could not be fairly and logically interpreted without contradicting the most objectionable features of hyper-Calvinism; and they felt too that they had formulated a system of doctrines which any candid inquirer after truth might understand. They did not, however, claim that the time would never come when there might be a demand for a restatement of these doctrines, which would set forth fully more clearly and logically the system of theology believed and taught by the Presbyterian Church. That time did come and so general was the desire throughout the church to have the confession of faith revised that at the general assembly which convened in the city of Austin, Texas, A. D. 1881, a paper was introduced looking to that end and it was adopted by an unanimous vote.

In view of the great importance of the work two committees were appointed and it was made the duty of the first committee to revise the confession of faith and government and of the second to review and revise the work of the first. The committee met at Lebanon, Tennessee, the seat of Cumberland University, where every facility

138 could be enjoyed for such labors, having free access to a fine theological library. After bestowing great labor upon their work, giving every item earnest and prayerful attention, the committees completed the tasks assigned them and the results of their labors were published in pamphlet form and in the weekly papers of the church for information, that criticism might be made by those desiring to do so. The committees, after receiving these criticisms, again met and remained in session for a number of days, giving careful attention and prayerful consideration to all the suggestions made. They then completed their work without a single dissent and submitted the result to the general assembly *with* convened in the city of Huntsville, Alabama, A. D. 1882. That general assembly, in committee of the whole, considered with great patience and care every item in the entire book, taking a vote on each one separately and at the close of each chapter or subject taking a vote on it as a whole. In this way the entire book, from beginning to end, was carefully and prayerfully scrutinized and necessary changes were made, the most of them verbal; and there was not in the final vote a single negative.

Having completed its work the general assembly transmitted the book to the presbyteries for their approval or disapproval. The reports from the presbyteries to the next general assembly, which convened in the city of Nashville, Tennessee, A. D. 1883, showed that this work had been almost unanimously adopted. The general assembly, having reviewed these returns from the presbyteries, formally declared said book to be the Confession of Faith and Government of the Cumberland Presbyterian Church.

The accuracy of the foregoing sketch is attested by the general assembly itself, which in 1885 ordered its insertion as a preface to the "Confession of Faith and Government" adopted in 1883. That was the last confession of faith and government adopted by the Cumberland Presbyterian Church and, as respondents insist, is now in full force and effect. It was prepared, considered and adopted with too much care and solemnity to be lightly handled and indifferently cast away only twenty-three years later. It is the same printed book filed as exhibit A to the bill in this cause.

The Cumberland Presbyterian Church is only four years less than one century old. It has always been and, as respondents insist, now is, a separate, independent, voluntary religious association, controlled and governed according to its confession of faith and government, as indicated in the sketch quoted. Though unincorporated itself some of its boards and institutions are chartered under the laws of Tennessee, Kentucky, and other states. From the time of its  
139 humble beginning in the year 1810, as aforesaid, to the last meeting of its general assembly in the month of May, 1906, the Cumberland Presbyterian Church extended its influence and organization into numerous states; and, at the latter date, as shown by the minutes of the general assembly, the church had 17 synods,  
114 presbyteries, 1514 ordained ministers, 9614 ordained elders,  
3914 ordained deacons, 2869 congregations and a total membership  
of 185,212.

The general assembly at Nashville, Tennessee, in 1903, appointed a committee on Presbyterian fraternity and union to confer with like committees of other presbyterian bodies, "in regard to the desirability of closer affiliation and organic union among members of the presbyterian family in the United States."

This committee reported to the general assembly at Dallas, Texas, in 1904, that it had agreed with a like committee of the Presbyterian Church in the United States of America, that each of the two committees should submit to its own general assembly their joint report, favoring the reunion and union of the two churches in one under the name of the Presbyterian Church in the United States of America, upon the doctrinal basis of its Confession of Faith as revised in 1903, and of its other doctrinal and ecclesiastical standards and upon certain considerations and recommendations contained — the said report. The general assembly adopted that report by a close vote and referred the "basis of union" to the presbyteries of the Cumberland Presbyterian Church for their approval or disapproval.

The next general assembly, which met at Fresno, California, 1905, appointed a special committee to consider and report the result of the action taken by the presbyteries. This committee divided and presented a majority and a minority report. The majority report was adopted by a close vote and the moderator declared that a majority of the presbyteries had approved the proposition of union submitted to them. In the minority report and also in a separate paper filed by those voting for the minority report an earnest protest was made. The vote on the majority report was 137 in the affirmative and 111 in the negative. Both reports recited that sixty presbyteries had voted approval and fifty-one disapproval. A tabulated statement exhibited with the majority report showed, however, that the fifty-one presbyteries disapproving had 137 more presbyterian votes than the sixty presbyteries approving.

The committee on fraternity and union was then increased by the addition of *their* members and directed to ascertain and report at the next meeting of the general assembly such other steps as might be deemed necessary for the completion of the proposed union.

140 The general assembly at Decatur, Illinois, in May, 1906, received and by a majority vote adopted the report made by this enlarged committee; and over the protest of a large minority, the moderator declared the basis of reunion and union to be in full force and effect. After the passage of a resolution to that end by the same majority and over the vote and protest of the same minority, the moderator declared the general assembly adjourned sine die as a separate assembly, to meet in and as a part of the 119th general assembly of the Presbyterian Church in the United States of America on the third Thursday in May, 1907, at a place not named. The protest was made and filed before the roll call on adjournment and before the declaration thereof was made by the moderator. The protest being disregarded and the purpose of the majority to adjourn without day and without naming the place for another meeting being persisted in, they were informed on the floor

of the assembly before the adjournment actually took place that the minority would treat the adjournment as illegal and ineffectual and would continue the session of the general assembly thereafter and immediately upon the announcement of the adjournment as aforesaid, and before the majority had actually dispersed, respondent J. H. Fussell, one of the minority, announced in a loud voice in the hearing of majority and minority commissioners, then in the assembly hall, that the business of the general assembly would be resumed at once in the G. A. R. hall near by, the church in which the previous part of the session was held being refused for that purpose. The minority commissioners then repaired to the hall indicated and there elected a moderator, the respondent J. L. Hudgins, and other officers to fill the places of those who had gone away; and having done this the attempted adjournment a short time before and the previous declaration that the reunion and union were in full force and effect were treated as ineffectual and rescinded because deemed unauthorized and illegal; and then the unfinished business of the general assembly was transacted and the assembly adjourned to meet again on the third Thursday *on* May, 1903, at Dickson, Tennessee.

The bill filed in this cause goes upon the erroneous assumption that the aforesaid steps on the part of the general assembly and presbyteries of the Cumberland Presbyterian Church and similar steps in the main on the part of the general assembly and presbyteries of the Presbyterian Church in the United States of America have effectuated a reunion and union between the two churches and completely merged the Cumberland Presbyterian Church, its ministry, membership and property into the Presbyterian Church in the United States of America.

141 Respondents deny that assumption *in toto*. They say there was no constitutional power in the Cumberland Presbyterian Church to form and accomplish such a union and merger and that every step taken to that end by the presbyteries and the general assembly of that church was in violation of its constitution, *ultra vires* and void. The constitution was and is the supreme law of the Church. It is found in a printed book called, "Confession of Faith and Government of the Cumberland Presbyterian Church," that book being the same whose preface has been set out in this answer. The courts of the church are named and their powers defined in the constitution in regular gradation. "These courts are denominated church-sessions, presbyteries, synods, and the general assembly," (sec. 24); "and the jurisdiction of these courts is limited by the expression provisions of the constitution." (sec. 25.) The powers of the general assembly are specifically enumerated in section 43 as follows:

"The general assembly shall have power to receive and decide all appeals, references and complaints regularly brought before it from the inferior courts; to bear testimony against error in doctrine and immorality in practice, injuriously affecting the church; to decide all controversies respecting doctrine and discipline; to give its advice and instruction in conformity with the government of the

church in all cases submitted to it; to review the records of the synods; to take care that the inferior courts observe the government of the church; to redress whatever they may have done contrary to order; to concert measures for promoting the prosperity and enlargement of the church; to create, divide or dissolve synods; to institute and superintend the agencies necessary in the general work of the jurisdiction; to suppress se-ismatical contentions and disputations according to the rules provided therefor; to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrines and order of this church; to authorize synods and presbyteries to exercise similar power in receiving bodies suited to become constituents of those courts and lying within their geographical bounds, respectively; to superintend the affairs of the whole church; to correspond with other churches; and, in general, to recommend measures for the promotion of charity, truth and holiness throughout the church under its care."

Manifestly this enumeration, full and elaborate as it *is*, does not as respondents are advised and believe, include power to form and accomplish a union and merger of this church with and into

142 another church. It does not even authorize the general assembly to make or entertain a proposition on such a subject. The jurisdiction of the general assembly being thus limited by the constitution to the express provisions thereof and these provisions not conferring the powers in question it must follow inevitably that the union and merger attempted and all stages taken for the accomplishment thereof were without constitutional authority and therefore, illegal, ultra vires and void.

Self-destruction or self-surrender was foreign to the thoughts and language of the framers of the constitution. The possibility of such a catastrophe was not contemplated by them. No power to accomplish such result was given by them, none can be inferred. The express limitation of the powers of the general assembly and of the presbyteries to certain enumerated subjects is equivalent to a positive prohibition against the usurpation of any other power as respondents are advised and believe. Nor can it avail the complainants anything that the constitution was subject to amendment under section 60 thereof; for no amendment was in fact made or even proposed.

But, if there had been the most ample constitutional power in the general assembly and presbyteries in the Cumberland Presbyterian Church to form a union with and to effectuate a merger with another church conformed to its doctrine and order completely or even substantially respondents would still insist that the union and merger asserted by the complainants are illegal, inoperative and void, because the Presbyterian Church in the United States of America is not the same or substantially of the same faith and order. The doctrine of the two churches was and is absolutely variant and irreconcilably antagonistic on certain essential and substantial subjects and points. The differences that lead to the formation of the Cumberland Presbyterian Church still exist in the main, as will appear to the court from the following quotations:



Confession of Faith of the Presbyterian Church in the United States  
of America (1788).

Chapter III. Of God's Eternal Decrees.

III. By the decree of God for the manifestation of his glory some men and angels are predestinated unto everlasting life, and others foreordained to everlasting death.

IV. These angels and men, thus predestinated and foreordained are particularly and unchangeably designed; and their number is so certain and definite that it cannot be either increased or diminished.

V. Those of mankind that are predestinated unto life, God before the foundation of the world was laid according to his eternal  
143 and inscrutable purpose and the secret counsel and good pleasure of his will hath chosen, in Christ unto everlasting glory out of his mere free grace and love, without any foresight of faith or good works or perseverance in either of them or any other thing in the creature, as conditions of causes moving him thereunto; and all to the praise of his glorious grace.

VI. As God hath appointed the elect only to glory, so hath he, by the eternal and most free purpose of his will foreordained all the means thereunto. Wherefore they who are elected being fallen in Adam, are redeemed by Christ, are effectually called unto faith in Christ by his spirit working in due season; are justified, adopted, sanctified, and kept by his power through faith unto salvation. Neither are any other- redeemed by Christ, effectually called, justified, adopted, sanctified, and saved, but the elect only.

VII. The rest of mankind God was pleased, according to the unsearchable counsel of his own will, whereby he extendeth or withholdeth mercy as he pleaseth for the glory of his sovereign power over his creatures, to pass by and to ordain them to dishonor and wrath for their sin, to the praise of his glorious justice."

"Declaratory Statement, 1902-03.

With reference to chapter III of the Confession of Faith: that concerning those who are saved in Christ, the doctrine of God's eternal decree is held in harmony with the doctrine of his love to all mankind, his gift of his son to be the propitiation for the sins of the whole world and his readiness to bestow his saving grace on all who seeketh. That concerning those who perish the doctrine of God's eternal decree is held in harmony with the doctrine that God desires not the death of any sinner, but has provided in Christ a salvation sufficient for all, adapted to all, and freely offered in the gospel to all; that men are fully responsible for their treatment of God's gracious offer; that his decree hinders no man from accepting that offer; and that no man is condemned except on the ground of his sin."



## Larger Catechism (1788).

Q. 67. What is effectual calling?

A. Effectual calling is the work of God's almighty power and grace, whereby (out of his free and especial love to his elect and from nothing in them moving him thereunto) he doth in his accepted time invite and draw them to Jesus Christ by his word and spirit; savingly enlightening their minds, renewing and powerfully determining their wills, so as they (although in themselves  
144 dead in sin) are hereby made willing and able freely to answer his call and to accept and embrace the grace offered and conveyed therein.

Q. 68. Are the elect only effectually called?

A. All the elect, and they only, are effectually called; although others may be and often are outwardly called by the ministry of the word and have some common operations of the spirit; who, for their wilful neglect and contempt of the grace offered to them, being justly left in their unbelief, do never truly come to Jesus Christ.

## Chapter X (1788). Of Effectual Calling.

III. Elect infants, dying in infancy, are regenerated and saved by Christ through the spirit, who worketh when and where and how he pleaseth. So also are all other elect persons who are incapable of being outwardly called by the ministry of the word."

## Declaratory Statement (1902-03).

With reference to chapter X, section 3 of the Confession of Faith, that is not to be regarded as teaching that any one dying in infancy *are* lost. We believe that all dying in infancy are included in the election of grace and are regenerated and saved by Christ through the spirit *who* when and where and how he pleaseth. See pages 20-25, 57, 138*b*, 175-6 of exhibit to the bill.

Confession of Faith of the Cumberland Presbyterian Church, 1883.

## Decrees of God.

8. God, for the manifestation of his glory and goodness by the most wise and holy counsel of his own will, freely and unchangeably ordained or determined what he himself would do, what he would require his intelligent creatures to do and what should be the awards, respectively, of the obedient and the disobedient.

9. Though all divine decrees may not be revealed to men, yet, it is certain that God has decreed nothing contrary to his revealed will or written word.

## Free Will.

God in creating man in his own likeness endued him with intelligence, sensibility and will, which form the basis of moral character and render man capable of moral government.

35. The freedom of the will is a fact of human consciousness and is the sole ground of human accountability. Man in his state of innocence was both free and able to keep the divine law, also to violate it. Without any constraint from either physical or moral causes he did violate it.

145

## Divine Influence.

38. God the father having set forth his son Jesus Christ as a propitiation for the sins of the world does most graciously vouchsafe a manifestation of the holy spirit with the same intent to every man.

## Regeneration.

54. All infants dying in infancy and all persons who have never had the faculty of reason are regenerated and saved. See pages 14, 26, 28 and 36 of exhibit A to the bill.

It is not believed by respondents that these declaratory statements have made any change or alteration in the original and objectionable sections of the Westminster Confession of Faith referred to therein. Indeed these statements do not purport to be more than mere explanation, which could have been made as well and as consistently in 1788 or 1810 as in 1903, the English language in which the confession of faith was written being the same all the while. Besides it is logically impossible that those statements have altered or changed the original book whose language remains unaltered and unchanged. Moreover the Larger Catechism, which was and is equally objectionable is not even mentioned in either of the two declaratory statements.

The general assembly of the Presbyterian Church, in 1904, passed a series of resolutions, one of which was intended to refute the supposition that its creed had been varied by the revision in 1903. That resolution was in the language following: "Resolved, 4, That the assembly, in connection with this whole subject of union with the Cumberland Presbyterian Church, placed on record its judgment that the revision of the confession of faith effected in 1903 has not impaired the integrity of the system of doctrine contained in the confession of faith and taught in the holy scriptures, but was designed to remove misapprehension as to the proper interpretation thereof."

Should it satisfy Cumberland Presbyterians to tell them that the founders of their church labored under a "misapprehension as to the proper interpretation" of those parts of the Westminster Confession of Faith leading to the separation in 1910 and that the suggestion in 1903 Declaratory Statements, of the supposed proper interpretation renders the creeds of the two churches identical or substantially so? Respondents think not. The original text of the objectionable sections has been reproduced literally in the book of 1903 and the added chapters relate to different doctrinal points.

The proposition attempted to be submitted to the presbyteries by the general assembly at Dallas may be said to have been intended to effect some amendment to the confession of faith of the Cumberland Presbyterian Church. If so, the attempt

146

as respondents are advised and believe, was inevitably abortive, because no definite and specific amendment was proposed in the general assembly and by it definitely and positively approved. The joint report on the subject of union was adopted and resolution was passed directing that the basis of union therein recited "be and is recommended to the presbyteries of the Cumberland Presbyterian Church for their approval or disapproval." But neither that report nor the resolution for submission can, as respondents are advised and believe, properly be treated as a proposed amendment to the confession of faith. "The basis of union" was the thing submitted to the presbyteries and the language of the submission was:—"Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the doctrinal basis of the confession of faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the scriptures of the old and new testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice." This question propounded to the presbyteries, as respondents are advised and believe, has none of the essential elements of an amendment. It was not proposed or passed by the general assembly as an amendment, or by that body recommended to the presbyteries as such and besides it is not sufficient in form.

To be effective as an amendment the written paper, proposition or resolution so intended must, as respondents are advised and believe, recite the exact and entire language of the change designed to be made in *hæc verba*, or at least exhibit some paper containing it. Neither was done or attempted to be done in the case now before the court. The same particularity or procedure as that used by the general assembly and presbyteries in reference to the book adopted in 1883 by them is requisite to a valid amendment of either the confession of faith or the constitution of the church. Respondents say additionally upon the question of amendment that a mere recommendation of a given proposition to the presbyteries for their approval or disapproval, without the previous approval of the general assembly itself of the proposition by a two-thirds vote does not meet the constitutional requirement and is simply nugatory. The general — as respondents are advised and believe, is required first by the constitution to express its own judgment in favor of a proposed amendment before submitting it to the presbyteries for their

147 approval. This it did not do in the present instance and for that reason, if every other step had been regular and the frame of the proposal or intended amendment perfect, the action of the presbyteries and all subsequent action of the general assembly were illegal and ineffectual, as respondents are advised and believe.

The submission or recommendation to the presbyteries was in fact made without any previous and definite approval of the so-called union and basis of union on its part. The absence of such approval was observed and commented upon by commissioners in the general assembly at the time the submission to the presbyteries was

made and more than a sufficient number of them to have changed the result and defeated the proposed submission voted for it in the belief and upon the statement of the moderator, then presiding, that the action then being taken was not intended as an expression of the general assembly's judgment in favor of union on the proposed basis, but only as a mere reference of the question to the presbyteries for their approval or disapproval. Those commissioners, as respondents are informed and believe, would otherwise have voted against the submission and defeated it.

The attention of the general assembly in 1905 and again in 1906 was, by the written protest of those opposing union, brought to the numerous grounds of objection entertained by them to the consummation of the union; and in that way ample notice was given of their purpose to do all reasonably within their power and within the law to perpetuate the name, life and usefulness of the Cumberland Presbyterian Church.

It is no doubt true that many of the best informed and most efficient members of the Cumberland Presbyterian Church, as well as many of those not so well informed and not so efficient, from 1810 to the present time, have thought that the general cause of Christianity might be promoted by the union of all branches of the presbyterian family in the United States, whenever it could be done upon the basis of the Cumberland Presbyterian creed. But none of either class, so far as respondents know, were ever until recently willing even to consider the matter of surrendering the name of their church and its confession — faith for the sake of union with any other body or bodies. Cumberland Presbyterians have always been willing that others shall see the light as they see it and join them in spreading the gospel as they understand it. They have always been willing for others who could conscientiously do so to come to them in their doctrine; but never before the recent movement by complainants and other unionists was connection with any other body upon different terms thought of so far as respondents know.

Respondents deny that the great bulk of the ministry and membership of the Cumberland Presbyterian Church have ever at any time realized that there was no longer any reason why this church should not be united with the Presbyterian Church in the United States of America. Some of them seem to have thought for a few years such a union desirable. At least two-thirds of the entire membership, however, as these respondents believe, have ever thought and do not think such a union desirable; but on the contrary regard it as very undesirable and feel that the complainants and others who entertain a different view are making a great mistake in undertaking to compel loyalists to submit to the union against their will and over their conscientious convictions. It must be apparent — all, intelligent and thoughtful persons that the effort at coercion can result in no good to any one and that the union without unity can but be dishonoring to God and discreditable to those who insist upon union over the conscientious protests of their brethren.

It may be true that "very unusual and very precautionary meas-

ures were adopted for the selection" of the first committee on fraternity and union in 1903. Respondents are not prepared to admit, however, that this was done that the committee "might be truly representative in its character." A few of the presbyteries memorialized the general assembly at that session on the subject of union. The most of these were opposed to it and the great majority of the presbyteries gave no expression on the subject. Several of the ministers then in favor of a suitable union were members of that body, one of the number being made chairman of the committee then appointed.

Respondents deny that the minutes of the general assembly at Dallas in 1904 furnished full information as to the supposed revision of the confession of faith of the Presbyterian Church in the United States of America. Besides, had it done so, comparatively few of the entire membership and a small proportion of the entire membership of the church ever saw or had access to those minutes. No means of informing the eldership or the membership below the grade of sessional clerk in reference to the supposed revision or any action taken in reference to the so-called union were adopted by the general assembly or by those urging the union. Failure in that respect is not now a matter of surprise to respondents or of regret to the complainants, who in their bill and otherwise press the contention that the congregations have no rights that are to be regarded in this matter and say that everything concerning the church its  
149 ministry, its membership and its property vests entirely with the general assembly and the presbyteries.

Respondents are informed and believe that those in the Presbyterian Church in the United States of America, ministers and laymen, are not harmonious on the question of union; that two members of its committee dissented from the joint report, a respectable minority voted against its adoption and many of its membership, ministers and laymen, were from the first and are now unalterably opposed to the so-called union upon various grounds, among them, that it is calculated to produce inevitable discord in both of the churches, thereby hindering and retarding the usefulness of both churches and the general growth of Christianity.

That church, it is conceded has taken steps to amend its constitution in reference to the separation of the races in certain presbyteries and synods; but that amendment, instead of making the right of such separation absolute, as provided in the first recommendation of the joint report to the general assembly in 1904, at Dallas, makes such right dependent upon the consent of the other race (the one not seeking the separation) in every case. In this particular the separation amendment actually made falls far short of that recommendation and is consequently no compliance at all; and the non-compliance in this particular on the part of the Presbyterian Church in the United States of America, as respondents are advised and believe, is so vital an element in the proposition of union submitted to and acted upon by the general assembly and presbyteries of the Cumberland Presbyterian Church, as aforesaid, as to render their action thereon inoperative and to relieve them and the church from the legal conse-

quences that might otherwise be laid by the complainants to follow from such action. The difference between the promise and the fulfillment is vital.

After the action of the general assembly at Dallas, in 1904, there was considerable discussion of the question of union in the official organ of the Cumberland Presbyterian Church published at Nashville under the name Cumberland Presbyterian. But after a short while this discussion was conducted mainly and almost entirely by those favoring union, communications from those opposing it being rejected by the editor, who was himself a warm advocate of union. At the beginning the then editor did not favor union on the basis proposed. Yet he was impartial so far as the columns of the paper were concerned and permitted both sides to be heard through that medium. This attitude of the paper not being satisfactory to the unionists continued for a short time only.

150 Some of the most influential among the unionists were likewise influential, as respondents are advised and believe, in leading the impartial editor reluctantly to resign and accept in a distant city a larger, more lucrative, position, which turned out to be short-lived and soon vanished. In his stead as editor of the Cumberland Presbyterian was placed a designed and designing unionist, who turned this organ of the church, in its editorials and communications, against those who seek to preserve the church and call themselves loyalists and to the support of those, on the other hand who call themselves unionists. The paper has been so used from that time until the present, unwarrantably, vigorously and even coercively as will abundantly appear from its files. The partisan course pursued by this editor in turning the organ of the church against a large portion of its ministry, eldership and membership gave the unionists a very great and very unjust advantage, thereby forcing the loyalists in self defence and for self-protection to resort to another paper called Cumberland Banner. This paper, being new and having but small capital, though a worthy periodical, did not have and could not have been expected to have a circulation and influence comparable to those of the Cumberland Presbyterian, which, though the property of the entire church and of one member as much as of any other member, had been so unjustifiably and so unfairly converted into a partisan paper and turned against those in conscience and justice equally entitled to its recognition and support. Never were those not in favor with "the powers that be" more unjustly treated. Never were equal owners more ruthlessly deprived of the equal use and benefit of the joint property.

The statement made in the fourth paragraph of the bill in reference to the increased membership of the committee on union is misleading, in that it would make the impression that eight of the nine new members were, when named, opposed to the union, and that the committee so enlarged, with one exception, favored the final consummation of the union in a report submitted to the general assembly at Decatur in 1906. The truth is that four of the eight declined to serve and their places were filled by — union moderator with unionists.



It is supposed to be true that the general assembly of each of the two churches convened on the same day and at Decatur, Illinois, and Des Moines, respectively.

Respondents admit that defendant J. H. Fussell and others presented an injunction bill against J. B. Hall and others to the honorable W. C. Johns at Decatur, on the 16th day of May, 1906,

151 for fiat to restrain the said committee from making its report and to restrain the general assembly from acting on that report when made. The defendants demurred to the bill. Argument was heard for both sides on the application for injunction and also on the bill and demurrer. A fiat was refused. The demurrer was sustained and the bill dismissed and from that action of the court the complainants appealed and the appeal is now pending. The pendency of that suit respondents insist can have no proper bearing upon the present suit.

The final report of the committee was accepted and the joint report on reunion and union was adopted by the general assembly of the Cumberland Presbyterian Church on the 23d day of May, 1906, by a vote of 165 to 91; but in reality the number of commissioners who would have voted in the negative if present was 106. The minutes of the assembly recite the names of 12 of the 15 absentees who would have voted in the negative if present.

A written protest, signed by 100 commissioners and which would have been signed by the other 6 loyal commissioners if present, at the moment, was presented and filed immediately after the vote was taken. The protest with its signatures appears on pages 79 and 80 of the minutes of 1906. Thereafter an effort was made by the unionists to adjourn the assembly sine die, as before stated. Respondents say they are advised and believe that attempt was abortive and of no legal consequence whatever because in violation of section 41 of the constitution of the church which requires each adjourning order of that body to name both time and the place of its next meeting, which was not done in this instance. That provision is found on page 100 of exhibit A to the bill.

Whatever the general assembly may have intended and attempted to adjudge, if anything, by adopting the report of its committee on over- in 1903, and the joint report on union and reunion in 1904 and the majority report of the special committee in 1905 and the joint report in 1906, these respondents deny that it had lawful power in that manner to adjudge that the so-called union had been constitutionally agreed to by the Cumberland Presbyterian Church and that the basis of union had been constitutionally adopted. They also deny that it had any judicial power while acting in a legislative capacity (as it was in doing the things referred to in the last sentence) to adjudge finally and conclusively in a judicial capacity the constitutionality of such action; or that in adopting the said reports in the years 1905 and 1906, it did decide or could decide authoritatively that there then existed substantial identity in the creeds of the two churches.

152 The question of identity in the two creeds as respondents are advised and believe, could not be decided or even raised

legally in the manner indicated. No proposition or resolution affirming such identity was submitted to the general assembly at any time, either as a matter of original cognizance or by appeal from an inferior court of the church. No such question has at any time been submitted to the general assembly and no such question has at any time been decided by the general assembly. These respondents again deny that such identity exists and they again assert that the two creeds in the vital points emphasized by the fathers as hereinbefore indicated are absolutely inconsistent and irreconcilable.

Respondents deny that all members of the Cumberland Presbyterian Church, or any of them so far as respondents know, ever promised either expressly or impliedly to abide by and support the rules and regulations of the church and to submit to its constituted authorities in the sense indicated by the complainants in their bill. Speaking for themselves, respondents say most positively that in assuming the obligations prescribed in the directory for worship it was not contemplated by them or either of them or by the person or persons administering those vows, that the church would be or could be merged into another church and that respondents would thereby be expected and required to give allegiance to the other church, or to persons of their own church who should in the future favor such a merger and attempt by whatever means to accomplish it. They deny most positively that they are under any obligation, either legal or moral, to acquiesce in the action of the general assembly and the presbyteries in reference to the so-called union; or that those obligations if they existed, would or could be strengthened by the decision of an inferior civil court whose decree has been vacated by appeal.

The decree of a chancellor when appealed from is not to be regarded by either the winning or the losing litigant "as *prima facie* correct." The case in that plight, as respondents are advised and believe, stands for *trai de novo* in the appellate court.

It may be true that "complainants are advised and believe that the general assembly and presbyteries would have had the implied power to form the union had the constitution not expressly granted it" and that "they are advised and believe that the constitution does expressly grant powers which amount to the power to form the union"; but respondents cannot admit that such advice is sound in law or that such belief is well founded in fact. They deny that any of the church courts have or had any power or jurisdiction at all, because as stated in the constitution itself "the jurisdiction of these courts is limited by the express provisions of the constitution"; and they further deny that the constitution expressly grants "powers which amount to the power to form the union." The powers granted to the general assembly have been set out in full in this answer and no one of them relates in any way to such a union. Just how any number or combination of those enumerated powers that do not singly or separately refer to the subject of union, can be logically or legally said to "amount to the power to form the union," respondents cannot understand; and they deny that it is true.

They do not know what complainants are advised and believe on

the subject, but they deny that the sovereign power of the church was or is vested in its general assembly and presbyteries in such sense that those bodies may destroy the church by merging it into another organization or otherwise or that they can exercise any power or jurisdiction other than that expressly conferred upon them by the constitution. If that were true the constitution would have no office to perform as to those bodies and they could indeed disregard its provisions altogether as the complainants intimate they may rightfully do. It is true that those bodies were in a certain sense the makers of the confession of faith and the constitution and other ecclesiastical standards; yet, that does not imply that they can disregard the work of their own hands while in existence or destroy it at will and without the observance of prescribed forms and procedures. Those bodies were first made themselves and they owe something to those who made them. It is not sovereign power but constitutional power, as respondents are advised and believe, that enables the general assembly and presbyteries, pursuing prescribed methods, to change and amend the organic law of the church; and this result can be accomplished only by express amendatory provision and never by implication as claimed in the bill. A statute may be repealed by implication through the passage of another statute inconsistent with it; but that rule is not applicable to constitutional provisions, or in the present case.

Statutes inconsistent with the constitution are void because of that inconsistency and attempted constitutional amendments not framed and passed in accordance with the requirements of the constitution are void for that reason. Such non-conforming amendments do not destroy the original constitution, but fail in their object because not in conformity with that instrument.

It is conceded that the membership of the church includes men, women and children, many of whom are not so well versed  
 154 in creedal and constitutional questions as are the ministers and elders. So much the greater therefore, is the duty and obligation of the ministers and elders to observe and preserve the creed and the constitution and the rights thereunder of the multitude of those who are less informed. The latter deeply regret their ignorance and feel keenly the reproach that would be cast upon them on that account by the complainants and others of the better informed, self-commended and self-praised class. Nevertheless respondents have an abiding confidence that this honorable court will protect them in their legal rights and that ignorance of church law on their part will not in this tribunal deprive them of their rights in respect of property under that law.

Respondents deny that what complainants call "the decisions of the general assembly" in reference to the question of union are "correct" and they deny with even greater emphasis, if possible, that "whether correct or not they are binding upon every church member and cannot be reviewed by the civil courts." If the so-called decisions are not correct in a true legal sense they are not binding upon any of these respondents and can be disregarded by any civil court

having jurisdiction of any property or property rights supposed to be affected thereby.

Respondents are informed and believe that the legal commissioners constituting the general assembly in the G. A. R. hall all regarded themselves as the legal representatives in that body of the Cumberland Presbyterian Church and as there having legal authority to do all they did. In that opinion these respondents concur. They deny that these commissioners then and there or at any other time and place, combined and conspired to repudiate anything. Their purpose as respondents are advised and believe, was to perpetuate the Cumberland Presbyterian Church and to prevent its repudiation and destruction, especially the latter, by the complainants and their associates and sympathizers; and that in that purpose they were firm and conscientious and, as respondents believe, wholly justifiable in fact and in law. They had no purpose and laid no plans to deceive or mislead any one or to induce or encourage any unlawful act by any one. Nor have these respondents or any other loyalists, so far as they know, ever had any such purpose or laid any such plans. Respondents have said and they verily believe that the so-called union and merger have not been and cannot be legally effectuated and that the Cumberland Presbyterian Church still exists as a separate organization of Christian people with its legal status and legal rights unimpaired.

It is true that a legal committee was formed for the purpose of giving legal advice when needed and that the defendant, J. H. Fussell, was made chairman of that committee. The printed circular referred to by the complainants as having been sent forth by that committee contains only such suggestions and advice as were and are believed to be sound in morals and in law. A copy of it is herewith filed, marked exhibit E and as such made a part of this answer. It speaks for itself and requires no defense of explanation from these respondents. An advisory board was also created and the defendant Eshman was made its chairman. The printed circular was issued by him as such chairman is herewith filed and marked exhibit E to this answer and as such is made a part hereof. It also speaks for itself and calls for no vindication or palliation from these respondents. It was issued in the utmost good faith.

Of their own knowledge respondents know nothing of the bill which complainants allege certain loyalists have filed in Atlanta, Georgia. They have heard that a bill has been filed in that city for the purpose of preserving to the Cumberland Presbyterian Church its house of worship there located, but they have no connection whatever with that litigation. Nor have they any connection with or personal knowledge of an injunction suit which they are informed certain unionists have brought in Corsicana, to deprive loyalists there of the possession of their local church property.

Respondents deny that they or other loyalists to their knowledge or by their consent have ever said or induced others to say that no change whatever has been made in the creed of the Presbyterian Church in the United States of America or made any concealment of what has actually been done in that regard by that church. Some

of them may have said and all of them sincerely believe that the so-called revision does not eliminate the objectionable features of that creed which led to the formation of the Cumberland Presbyterian Church. Nor have they nor others to their knowledge or with their consent, done or said anything to excite prejudice or engender hard feelings against their brethren who have espoused the cause of the so-called union or against the church into which they would go. They deny that they or others to their knowledge or with their consent have done or said anything except by way of persuasion and entreaty to prevent their union brethren in any presbytery or other church court, congregation or board from going into the so-called union and promoting the same with their time, talents and money. They have urged and still urge their union brethren to

stay with them in the church of their common ancestors.  
 156 It may be and no doubt is true that thousands of people now abstain from contributions to the so-called united church and to the Cumberland Presbyterian Church and that the cause of missions in Japan, China, Mexico, and the United States is embarrassed on account of the division caused by the agitation of union so-called. Respondents, however, say most positively and emphatically that the responsibility for for this unfortunate and deplorable situation and for the strife and contention in the church at this time rest wholly upon the heads of the complainants and their allies who have for months sought and still seek by injunction and otherwise to force these respondents and other loyalists into the union against their wills and over their consciences. Respondents want peace; they beg for peace; and if the complainants and other unionists want to go into the other church and insist on going despite the persuasion and entreaties of loyalists they can but say regretfully, Let them go, leaving others the like liberty of conscience and action.

Respondents deny and repel with merited indignation the insinuation made by the complainants that money contributed for the cause of home missions or other religious purposes is being diverted by respondents or other loyalists from their proper and legitimate channels.

It is no doubt true that complainants Landrith and Hubbert are chairman and secretary, respectively, of the committee on pastoral oversight in what they call the united church and that as such they have express power to employ legal counsel in any litigation that may arise in any part of the Cumberland Church or in reference to any of its property. From what funds the fees of such counsel are to be paid complainants do not see fit to disclose in their bill. The fact that such power was conferred in advance of any of the litigation in question shows however that some litigation and perhaps this very bill and other similar to it were in contemplation at the time and that it was then as now a part of the scheme of the unionists to force the loyalists by law if possible, to submit to that which their consciences did not and cannot and will never approve.

Respondents believe that they and other loyalists have a perfect legal right to assert at all times in a peaceful and becoming manner that the Cumberland Presbyterian Church still lives and to induce

by a fair and legitimate statement and argument as many of its members as they can to assist in the perpetuation of its name and usefulness, notwithstanding what they regard as the illegal and ineffectual efforts of the complainants and others to accomplish the so-called union through the destruction of that name, life and usefulness.

157 The policy of respondents has been and is conciliatory and against litigation. They are advised and believe and aver as before stated that the so-called union is an absolute nullity, except as to those who voluntarily withdraw from the Cumberland Presbyterian Church, which they could have done without the so-called union; respondents deny, however, that this contention on their part and the part of other loyalists can in any true legal sense be said to cast a cloud upon the property of the Cumberland Presbyterian Church or that of its congregations. The real legal title to such *be* property being in fact in that church and in those congregations, respectively, it is impossible that the claim of ownership by loyalists should cast a cloud upon that title. The claim of ownership by the true owner does not constitute a cloud upon his title.

Respondents are advised, believe and aver that each separate congregation in the Cumberland Presbyterian Church is in a large sense the independent owner of its own local church property according to the terms of the instrument by which the property was acquired and that no other congregation has any especial interest or ownership therein. It was improper therefore that members of three congregations and still other persons not members of either of those congregations should be sued and impleaded. In this cause; or that members of three different alleged congregations and still other persons not members of either of said alleged congregations should sue and plead jointly in the bill filed by the complainants or that residents of other counties should sue and be sued in Lincoln County.

Respondents suppose it is true that the complainants are understood by themselves and by each other to occupy the respective relations they claim to the Presbyterian Church in the United States of America; yet it cannot be true that any of them are now officers of the general assembly of the Cumberland Presbyterian Church, if as they claim that church ceased to exist with the alleged adjournment by them and other unionists, or if it be true, as claimed by the respondents that such adjournment was nugatory and the complainants voluntarily abandoned their respective offices in that general assembly.

Following the course of the bill, respondents again deny that the so-called union has been legally consummated and that, as a result, the title to the property of the members, judicatories, and other ecclesiastical agencies of the Cumberland Presbyterian Church has passed by operation of law to the members, corresponding judicatories and agencies of the so-called united church. The title

158 to all such property, as respondents are advised and believe and aver, remains as and where it was before the meeting of the general assembly at Decatur in 1906.

Respondents deny that they or any of them or other persons



desiring to remain in the Cumberland Presbyterian Church and intending to do so, can properly be denominated "renouncers"; or that by adhering to their firm and conscientious purpose in that behalf they vacate their respective offices in the congregations of that church and relinquish their rights in any of its property. On the contrary the unionists, complainants and others, who persist in leaving the Cumberland Presbyterian Church and in a denial of allegiance to it are in legal contemplation seceders and by that persistence and denial denude themselves of their official robes and relinquish all rights of membership and property.

Respondents further deny that the complainants have any right to maintain this bill to quiet their alleged lawful possession of any of the property of the Cumberland Presbyterian Church, its boards or congregations, or for any other purpose. They deny that the possession of any part of the said property has been unlawfully taken by these respondents or any of them or by any one else to their knowledge.

Respondents suppose it is true that the membership of the Presbyterian Church in the United States of America is more than 1,000,000, scattered over a number of states; but they deny that the number of Cumberland presbyterians who favor the so-called union with that church is more than 100,000. It is not much, if any, more than half so large. They admit that many thousands of Cumberland presbyterians are conscientiously opposed to going into that church and intend to adhere firmly and to the last to their own church. Of these respondents believe there are about 125,000.

It is denied that the complainants state any reason why they should be allowed to maintain this action, if at all, for other persons than themselves, or against other persons than those actually named as defendants. The facts alleged do not show the complainants or the defendants to be proper representatives of any other persons. Indeed they do not disclose any joint right of action between complainants at the different towns mentioned or between any of those and the other complainants; nor do they disclose any joint right of action against the defendants in any one of those towns with any of the other defendants. Respondents deny the existence of any such right on the part of the complainants and of any such liability on the part of the defendants.

Respondents, therefore, answer for themselves only. In 159 doing this they deny that they have done, participated in or encouraged any unlawful act with reference to the so-called union or any of the property of the Cumberland Presbyterian Church, its boards and congregations. Nor have they sought to create any strife or division in the church or to hinder or retard its usefulness or the usefulness of any of its enterprises or in any manner to cripple the cause of Christianity. They have sought and desired and still seek and desire that the Cumberland Presbyterian Church should be divided and that their brethren the complainants who have caused the division should desist from further prosecution and thereby restore the happiness and usefulness formerly enjoyed by their church.

Respondents respectfully and earnestly ask that the injunction granted in this cause be dissolved and the religious work and worship of these respondents and of other Cumberland presbyterians — no longer embarrassed and restrained. The injunction has already greatly interrupted and in many instances caused an absolute suspension of sessional meetings, prayer meetings, sunday schools and the regular religious services of the church. Some of the houses of worship have been closed to all services because of the injunction. The Elk Presbytery and the Memphis Presbytery, both in Tennessee, have been prevented from holding their meetings. The members of these presbyteries gathered at times and places duly appointed, but on account of the pending injunction, dispersed and went back to their homes and to their people in sorrow and humiliation without transacting any business or even daring to open the presbytery with song and prayer or to do or say anything in the name of the Cumberland Presbyterian Church.

The unionists, however, as respondents are informed and believe, have gone on with their services without let or hindrance and by flaunting the injunction in the faces of loyalists, have taken advantage of them at various times and places. The unionists held what they denominated a presbytery of the Presbyterian Church in the United States of America at Memphis, Tennessee, on the 31st day of July, 1906, and without representation on their part assumed the right to direct and control Cumberland Presbyterian congregations within the bounds of the Memphis presbytery of the Cumberland Presbyterian Church. This was done after the meeting of the Elk Presbytery had been prevented and at a time when the loyal members of the Memphis Presbytery were understood to be restrained from doing or saying anything anywhere in the name of the Cumberland Presbyterian Church.

On the 29th day of July last, while the loyal pastor of the congregation at Davidson's Chapple near Trenton, was absent and  
160 his church house locked, a union minister from Milan, without the pastor's knowledge went to the house with another key and against the wishes of the members and behind the protection of the injunction defiantly held services.

These respondents have no personal knowledge of the real situation at Bowen's chappel, at Fayetteville, at McKenzie and at Kenton; but they cannot believe that the loyalists at these places or at any of them are properly subject to the grave censure held against them by the complainants. The real facts of the alleged controversy at Fayetteville and at McKenzie and at Kenton are left by these respondents to be stated by their co-defendants of those congregations, respectively.

These respondents, as before stated, are conscientiously opposed to the so-called union and firm in their purpose to stand by the church of their fathers and abide its fortune, which they believe will be one of long life and great usefulness.

The official positions of respondents, J. L. Hudgins, A. N. Eshman, and J. H. Fussell are as heretofore stated in this answer and their conduct and convictions are as heretofore stated in this answer.

Respondent, T. A. Havron, is the editor of the Cumberland Banner, a paper which was established and which continues to be published in the interest of loyal Cumberland Presbyterians who were and are unjustly refused a hearing in the columns of the Cumberland Presbyterian in which they had and have at least an equal right with the unionists to whom it is devoted exclusively; and in the interest of the Cumberland Presbyterian Church, whose name, life and usefulness the Cumberland Presbyterian would so eagerly destroy. The paper speaks for itself. Respondent, F. A. Seagle, is president of the board of publication and attempts faithfully to discharge his duty as such. Respondent, Hardy Copeland, is a Cumberland Presbyterian minister. Though he resided in Texas when the discussion of the union question was begun he is a native of Tennessee and is now a resident of this state. He took an humble part in that discussion in the early part of the present year and after the meeting of the general assembly at Decatur he came to Nashville and has since that time been preaching at different points in the Lebanon presbytery. He is a loyalist and on all suitable occasions has expressed himself freely against the so-called union and in favor of the preservation of the Cumberland Presbyterian Church, which he so much loves and whose doctrine, as contradistinguished from those of the Presbyterian Church in the United States of America, he so conscientiously believes. He denies that he sought to stir up division and contention anywhere or that he has for weeks or at all besieged the  
 161 congregations in Nashville with that view. He has visited some of the members of the Nashville congregation, who, like himself, are loyal to the Cumberland Presbyterian Church and he has engaged in some discussion, as he has thought every free man had the right to do, of what he regards as some of the doctrinal differences in the creeds of those two churches. In doing the latter he has called attention to different portions of the confession of faith of the one church and the other. He admits that he has said in substance and that he then believed and now believes that the Roman Catholic Church claims no more for its priesthood than is expressed in sections one and two of chapter 30 of the Westminster confession of faith. Those sections are as follows:

"I. The Lord Jesus Christ, as king and head of his church, hath therein appointed a government in the hands of church officers, distinct from the civil magistrate.

II. To those officers the keys of the kingdom of heaven are committed by virtue whereof they have power, respectively, to retain and remit sins, to shut that kingdom against the impenitent, both by the word and censures; and to open unto penitent sinners by the ministry of the gospel and by absolution from censures, as occasion shall require."

He denies that there is attached to said sections in the Westminster confession of faith to which he has had access or elsewhere to his knowledge a foot note explaining those sections meaning nothing more than that the visible church has power to receive persons into its membership and to exclude them therefrom, or that those sections have been a part of the Cumberland Presbyterian confession of faith

since he became a minister. This respondent has never attempted to deceive any one in reference to any matter connected with or having any bearing upon the so-called union.

All the allegations of the bill not hereinbefore admitted or denied are now denied; and having fully answered these respondents pray to be hence dismissed with their reasonable costs.

J. H. FUSSELL.  
J. H. ZARECOR.  
J. J. McCLELLAN,  
W. C. CALDWELL,  
*Solicitors for Respondents.*

162 STATE OF TENNESSEE,  
*County of Gibson, ss:*

Before me, G. W. Wade, a notary public of said county and state, personally appeared J. L. Hudgins, one of the respondents in the foregoing answer and made oath in due form of law that the statements therein made as of his own knowledge he knows to be true and those made on information and belief he believes to be true.

J. L. HUDGINS.

Sworn — and subscribed before me this the 15th day of August, 1906.

[SEAL.]

G. W. WADE,  
*Notary Public.*

STATE OF TENNESSEE,  
*County of Davidson, ss:*

Before me, James Graham, a notary public of said State and county, personally appeared A. M. Eshman and Hardy Copeland and J. H. Fussell, three of the respondents in the foregoing answer and made oath in due form of law that the statements therein made as of their own knowledge they know to be true and those made on information and belief they believe to be true.

A. N. ESHMAN.  
HARDY COPELAND.  
JOS. H. FUSSELL.

Sworn to and subscribed before me this the 24th day of August, 1906.

[SEAL.]

JAMES GRAHAM,  
*Notary Public.*

STATE OF TENNESSEE,  
*County of Lincoln, ss:*

Before me Walter S. Bearden, Chancellor of the Chancery Court of Lincoln County, personally appeared T. A. Havron and F. A. Seagle, two of the respondents in the foregoing answer and being duly sworn say that the statements made therein as of their own

knowledge they know to be true and those made on information and belief they believe to be true.

F. A. SEAGLE.  
T. A. HAVRON.

Sworn to and subscribed before me this the 19th day of September, 1906.

WALTER S. BEARDEN, *Chancellor*.

Endorsed: Filed Sept. 11, 1906. J. E. Poindexter, Clerk & Master.

163 The following opinion was filed, viz:

C. R. SHARPE et al.

v.

E. W. BONHAN et al.

I am of opinion that the questions presented in this case upon the plea to the jurisdiction and the motion for preliminary injunction are not distinguishable in principle from those in the cases of *Stevens v. Smart* and *Finley v. Williams*, 172 Fed. 466, in the Circuit Court of the Eastern District of Tennessee, involving similar controversies in reference to church property in the city of Chattanooga. Having set out fully in that opinion the reasons on which it is based, I shall in the present cases merely state my general conclusions.

1. I am of opinion that, under the authorities cited in the foregoing opinion, the defendants I. T. Rhea, John M. Gaut, and W. P. Hardison, Trustees of the Grace Church property, are necessary and indispensable parties in a suit as the present, having as an essential object the obtaining of a decree that as such trustees they hold title to the property in trust for the exclusive use and benefit of the congregation of Grace Church of which the complainants are members; and that if not indispensable parties, they are at least proper parties as such trustees and will be materially affected by a decree declaring the beneficiaries for whose use and benefit they hold the property in trust and necessarily imposing on them the active duty of holding the property for the use and benefit of such persons and no others and permitting the use of the property by such persons and no others; that, in the absence of any showing of antagonism between them and the complainants, they are to be aligned on the same side of the controversy with the complainants in this suit, such re-alignment not being prevented by the fact that being unable on account of their citizenship to maintain a suit in this court as complainants they have declined to institute the same, although they do not appear to be opposed to the suit if it *can* be maintained by others and that, as such re-alignment places these three defendants, who are citizens of Tennessee, on opposite sides of the real controversy from their co-defendants, who are citizens of Tennessee, and the requisite citizenship is thereby destroyed, it must be held that the suit does not really and substantially involve a con-

troversy properly within the jurisdiction of this court and the plea in abatement must, for that reason, be held sufficient in law.

2. And while the averments of the plea in this case are not as specific as those in the Stevens and Finley cases in showing the identity of interest between the trustees and the complainants, yet as the complainants by setting down the plea for argument have admitted, for the present purpose, the broad averments of the plea that these trustees are improperly and collusively joined as defendants for the purpose of creating a case cognizable in this court and that when the parties are properly aligned according to interest the defendant trustees will be found on the same side of the controversy with the complainants, it follows that under such admission the plea in abatement must be held sufficient in law for that reason also.

3. An order will accordingly be entered allowing the plea in abatement and in consequence denying the motion for an injunction, without consideration of the merits.

March 26, 1910.

SANFORD, *Judge*.

165 The following declination to plead further was filed, viz:

In the United States Circuit Court at Nashville, Tennessee.

No. 3588. In Equity.

C. R. SHARPE et al.

vs.

E. W. BONHAM et al.

The Complainants in this cause decline to plead further upon the question of the jurisdiction of the Court; and they elect to stand upon the insufficiency of the plea heretofore filed by defendants.

JOHN M. GAUT,  
ALEX. P. HUMPHREY,  
*Attorneys for Plaintiffs.*

Copy.

166 The following decree was rendered upon April 8, 1910, viz:

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

Be it remembered that this cause came on to be heard upon the motion of the complainants for the issuance of an injunction in accordance with the prayer of the bill and upon the motion of complainants to disallow the pleas of the defendants because said pleas were insufficient in law.

Upon consideration the court doth order, adjudge and decree that the motion for an injunction be disallowed and the court doth fur-



ther order, adjudge and decree that said pleas are sufficient in law and are therefore allowed. The costs incident to the above motion will be paid by the complainants for which execution will issue as at law.

The following order dismissing the bill was entered, viz:

C. R. SHARPE et al.  
v.  
E. W. BONHAM et al.

In this cause, upon this the 13th day of April, 1910, it appearing to the court that complainants have formally declined to plead further in the cause, having elected to stand upon the insufficiency of the pleas of the defendant heretofore filed and said pleas having been heretofore adjudged to be sufficient, it is, therefore, ordered, adjudged and decreed by the court that the bill be dismissed for want of jurisdiction; and that the complainants pay the costs of the cause, for which execution will issue as at law against them and their sureties upon the prosecution bond.

The following certificate was filed, viz:

C. R. SHARPE et al.  
v.  
E. W. BONHAM et al.

In this cause I hereby certify that the judgment of dismissal herein made is based solely upon the ground that the record does not show that the controversy involved is one, in my opinion, between citizens of different states, but that it appears from the record that three of the defendants, to-wit: I. T. Rhea, John M. Gaut, and W. T. Hardison, Trustees, are not antagonistic to the complainants and that therefore they must be aligned upon the same side  
167 of the controversy with the complainants; and therefore some of the defendants and some of the complainants are, in fact, citizens of the same State and no other ground of jurisdiction appears from the record. The case is dismissed only for the reason above stated; that is, that the controversy is not between citizens of different states, and consequently the Circuit Court of the United States has no jurisdiction.

This certificate is made in conformity to the Act of Congress of March 3, 1891, Chapter 517, and the opinion filed herein is made part of the record, and will be certified to and sent up as a part of the proceedings, together with this certificate.

The following petition for appeal was filed, viz:

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

The above-named plaintiffs, conceiving themselves aggrieved by the decree made and entered on the 13th day of April, 1910, in the above-entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States. Plaintiffs further pray that pending this appeal, in order that the status quo as to the property herein involved may be maintained, they be granted the injunction prayed for in the original bill in this cause as amended.

JOHN M. GAUT,  
ALEX. P. HUMPHREYS,  
*Attorneys for Plaintiffs.*

Dated 14th day of April, 1910.

The foregoing claim of appeal is allowed, but not the injunction.  
EDWARD T. SANFORD, *Judge.*

Dated 14th day of April, 1910.

Endorsed: Filed April 14, 1910. H. M. Doak, Clerk.

The following assignment of errors was filed, to-wit:

C. R. SHARPE et al.

v.

E. W. BONHAM et al.

The complainants pray an appeal from the final decree of this court to the Supreme Court of the United States and assign for error:

First. That the court erred in allowing the plea in abatement and denying the motion for an injunction.

Second. That the court erred in holding that the defend-  
168 ant- I. T. Rhea, John M. Gaut and W. T. Hardison, Trustees,  
are necessary and indispensable parties to this cause and  
that their interest in the subject matter herein involved must be  
considered by the court.

Third. That the court erred in holding that in the absence of  
any showing of an antagonism between defendants I. T. Rhea, John  
M. Gaut and W. T. Hardison, Trustees, and the complainants, said  
defendants are to be aligned upon the same side of the controversy  
with the complainants in this suit.

Fourth. That the court erred in holding that when the parties  
are properly aligned according to interest the defendant trustees will  
be found on the same side of the controversy with the complainants.

Fifth. That the court erred in holding that this cause was not a

controversy between citizens of different states and that the court did not have jurisdiction thereof.

Sixth. The court erred in dismissing complainants' bill.

Wherefore plaintiffs pray that the decree of the said Circuit Court be reversed and that pending the appeal the injunction prayed for in the bill be granted and maintained.

JOHN M. GAUT,  
ALEX. P. HUMPHREYS,  
*Attorneys for Plaintiffs.*

Endorsed: Filed April 14, 1910. H. M. Doak, Clerk.

The following order was entered, allowing appeal, viz:

C. R. SHARPE et al.  
v.  
E. W. BONHAM et al.

This day came C. R. Sharpe et al., being all of the complainants in the above-entitled cause, and presented their petition for an appeal and an assignment of errors accompanying the same, which petition upon consideration of the court is hereby allowed and the court allows an appeal to the Supreme Court of the United States upon filing of a bond in the sum of five hundred dollars with good and sufficient security, to be approved by the clerk of this court. The application of said complainants and appellants for an injunction pending this appeal, is hereby denied.

The following bond for appeal was filed, viz:

Know all men by these presents that we, C. R. Sharpe, and others, plaintiffs as principals, and J. A. White, and W. B. Baird, as sureties are held and firmly bound unto E. W. Bonham and the other defendants in case No. 3588, U. S. Circuit Court for the Middle District of Tennessee of C. R. Sharpe et al. v. E. W. Bonham et al. in the full and just sum of five hundred dollars to be paid the said E. W. Bonham and the other defendants, certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this the 16 day of April, 1910. Whereas lately at a Circuit Court of the United States for the Middle District of Tennessee, in a suit depending in said court between C. R. Sharpe et al., plaintiffs, and E. W. Bonham et al. defendants, a decree was rendered against the said C. R. Sharpe and other plaintiffs and the said Sharpe et al. having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit and a citation directed to the said E. W. Bonham et al., citing and admonishing them to be and appear at a session of the United States Supreme Court on the 20 day of September Inst. Now the condition of this obligation is such that if the said C. R. Sharpe et al. shall prosecute their appeal to effect,

or failing therein shall pay all costs and damages which may — awarded, if they fail to make their plea good, then the above obligation to be void; otherwise to be and remain of full force and virtue.

C. R. SHARPE ET AL., [SEAL.]  
*Appellants,*  
 By JOHN M. GAUT, *Sol'r.* [SEAL.]  
 JOHN A. WHITE. [SEAL.]  
 W. O. BAIRD. [SEAL.]

Scaled and delivered in the presence of:

H. M. DOAK, *Clerk.*

Approved by

H. M. DOAK, *Clerk.*

Endorsed: Filed April 16, 1910. H. M. Doak, Clerk.

The following citation was issued and executed, viz:

UNITED STATES OF AMERICA,  
*Middle District of Tennessee:*

United States Supreme Court.

To E. W. Bonham and others, defendants and appellees in case No. 3588 of C. R. Sharpe et al. v. E. W. Bonham et al., Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court to be holden at the City of Washington on the 20 day of Sept. inst. pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Middle District of Tennessee, wherein C. R. Sharpe et al. are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this the 3 day of Sept., 1910, and of independence the 1334th year.

EDWARD T. SANFORD, *Judge.*

170 Service of the foregoing citation is accepted, this the 6 day of Sept., 1910.

FRANK SLEMMONS,  
*Solicitors for Appellees.*

I, H. M. Doak, clerk of the Circuit Court of the United States for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect and complete transcript of the

record of the above-styled cause, as the same is on file or of record in my office, except such parts as are omitted by virtue of stipulation therein included. In witness whereof I have hereunto signed my name and affixed the seal of the court, at my office, at Nashville, Tennessee, this the 6 day of Sept., 1910.

[Seal Circuit Court U. S., Middle District Tenn.]

H. M. DOAK, *Clerk.*

Endorsed on cover: File No. 22,321. M. Tennessee C. C. U. S. Term No. 700. C. R. Sharpe et al., appellants, vs. E. W. Bonham et al. Filed September 24th, 1910. File No. 22,321.

At a Circuit Court of the United States for the Middle District of Tennessee, begun and holden, at Nashville, upon the second Monday of October, 1910, the following proceedings were had, to-wit:

Upon the 1st day of February, 1911, present and presiding the Hon. Edward T. Sanford, Judge etc., a petition for appeal was filed as follows, viz:

No. 3588. Equity.

C. R. SHARPE et al.

vs.

E. W. BONHAM et al.

The above-named complainants, C. R. Sharpe, Belle Monroe, Margaret McDonald, W. W. McDonald, conceiving themselves aggrieved by the decree made and entered on the 12th day of April, 1910, in the above-entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed and that a transcript of record, proceedings and papers upon which said decree was made duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 1st day of February, A. D. 1911.

ALEX. P. HUMPHREYS,  
JOHN M. GAUT.

*Solicitors for Complainants.*

The following assignment of errors was filed, viz:

No. 3588. Equity.

C. R. SHARPE et al.

vs.

E. W. BONHAM et al.

The complainants, C. R. Sharpe, Belle Monroe, Margaret McDonald, and W. W. McDonald, pray an appeal from the final decree of this court to the Supreme Court of the United States and assign for error:

First. That the court erred in allowing the plea in abatement and denying the motion for injunction.

Second. That the court erred in holding that the defendants I. T. Rhea, John M. Gaut and W. T. Hardison, Trustees, are necessary and indispensable parties to this cause and that their interest in the subject-matter herein involved must be considered by the court.

Third. That the court erred in holding that in the absence of any showing of an antagonism between defendants I. T. Rhea, John M.



Gaut, and W. T. Hardison, Trustees, and the complainants, said defendants are to be aligned upon the same side of the controversy with the complainants in this suit.

Fourth. That the court erred in holding that when the parties are properly aligned, according to interest, the defendant trustees will be found on the same side of the controversy with the complainants.

Fifth. That the court erred in holding that this cause was not a controversy between citizens of different states and that the court did not have jurisdiction thereof.

Sixth. The court erred in dismissing complainants' bill.

Wherefore plaintiffs pray that the decree of the said circuit court be reversed and that pending the appeal the injunction prayed for in the bill be granted and maintained.

ALEX. P. HUMPHREYS,

JOHN M. GAUT,

*Attorneys for Plaintiffs.*

The following order allowing appeal was entered, viz:

No. 3588. Equity.

C. R. SHARPE et al.

vs.

E. W. BONHAM et al.

This day came C. R. Sharpe, Belle Monroe, Margaret McDonald, W. W. McDonald, being all the complainants in the above-styled cause and presented their petition for an appeal and an assignment of errors accompanying the same, which petition, upon consideration of the court is hereby allowed and the court allows an appeal to the United States Supreme Court upon the filing of a bond in the sum of five hundred dollars, with good and sufficient security to be approved by the clerk of this court.

Enter.

EDWARD T. SANFORD, *Judge.*

The following bond was filed, to wit:

No. 3588. Equity.

C. R. SHARPE et al.

vs.

E. W. BONHAM et al.

Know all men by these presents that we, C. R. Sharpe, Belle Monroe, Margaret McDonald and W. W. McDonald, complainants in the above-styled cause, as principals, and W. B. Baird and John A. White as sureties are held and firmly bound unto E. W. Bonham et al. *et al.* defendants in the above-styled cause, in the full and just sum of five hundred dollars to be paid to the said E. W. Bonham et al., their certain attorneys, executors, administrators, or assigns,

to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dates this 15 day of Feb'y 1911.

Whereas lately at a circuit court of the United States for the Middle District of Tennessee, in a suit pending in said court between C. R. Sharpe et al. *et al.*, complainants and E. W. Bonham et al. defendants a decree was rendered against the said C. R. Sharpe et al. *et al.* and the said C. R. Sharpe et al. *et al.* whose names are hereinafter fully set out, having obtained an appeal and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit and a citation directed to the said E. W. Bonham et al., citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 15 day of March, 1911 next;

Now the condition of the above obligation is such that if the said C. R. Sharpe et al. shall prosecute their appeal to effect, or answer all damages and costs if they fail to make their plea good, then the above obligation to be void; *tocherwise* to remain in full force and virtue.

C. R. SHARPE & OTHERS, *Appellants*,  
By JOHN M. GAUT, *Sol'r*.  
W. B. BAIRD,  
JOHN A. WHITE.

Sealed and delivered in the presence of.

H. M. DOAK, *Clerk*.

Approved:

H. M. DOAK, *Clerk*.

UNITED STATES OF AMERICA,  
*Middle District of Tennessee:*

The Supreme Court of the United States of America.

To E. W. Bonham, John M. Smith, J. H. Barbee, J. N. Hobbs, John B. Robertson, Thomas H. Allen, T. S. Harbison, Ben. E. White, Isaac T. Rhea, John M. Gaut, W. T. Hardison, and Hardy Copeland, and all the members of Grace Cumberland Presbyterian Church, of Nashville, Tennessee, *Greeting*, defendants in case No. 3588, of C. R. Sharpe et al. vs. E. W. Bonham et al. *et al.*, *Greeting*:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 15 day of March next, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Middle District of Tennessee, wherein C. R. Sharpe et al. are appellants and you are defendants to show cause, if any there be, why the decree rendered against the said appellants as in

said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this the 15 day of Feb'y, 1911, and of American Independence the 135th year.

JOHN E. McCALL.

*Judge Holding the District Court of the United States.*

Service accepted this 24 day of Feb'y, 1911.

FRANK SLEMMONS.

*Attorney for Defendants.*

I, H. M. Doak, clerk of the Circuit Court of the United States for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect and complete copy of the foregoing papers in the record in the above-entitled cause. In witness whereof I have hereunto signed my name and affixed the seal of the court, at office at Nashville, Tennessee, this 20 day of Feb'y, 1911.

[Seal Circuit Court U. S., Middle District, Tenn.]

H. M. DOAK, *Clerk.*

[Endorsed:] No. 3588. C. R. Sharpe et al. vs. E. W. Bonham et al. Transcript of Record. John M. Gaut, Nashville, Tenn., Alex. P. Humphreys, Louisville, Ky., for Appellants; W. C. Caldwell, Trenton, Tenn., Frank Slemmons, Nashville, Tenn., for Appellees. 700/22321.

[Endorsed:] File No. 22,321. Supreme Court U. S. October Term, 1910. Term No. 700. C. R. Sharpe et al., Appellants, vs. E. W. Bonham et al. Certified copies of papers on second appeal. Filed February 27, 1911.

U. S. Circuit Court.

No. 3588. Equity.

C. R. SHARPE et al.

vs.

E. W. BONHAM et al.

In this cause I hereby certify that the judgment of dismissal herein made is based solely on the ground that the record does not show that the controversy involved is one, in my opinion, between citizens of different states, but that it appears from the record that three of the defendants, to-wit: I. T. Rhea, John M. Gaut, and W. T. Hardison, Trustees, are not antagonistic to the complainants, and that therefore they must be aligned upon the same side of the controversy with the complainants; and that therefore some of the defendants and some of the complainants are, in fact, citizens of the same state, and no other ground of jurisdiction appears from the record. The case is dismissed only for the reason above stated; that is that the controversy is not between citizens of different states, and consequently the Circuit Court of the United States has no jurisdiction.

This certificate is made conformable to the Act of Congress of March 3, 1891, chapter 517, and the opinion filed herein is made part of the record, and will be certified to and sent up as a part of the proceedings, together with this certificate.

Dated this 14th day of April, A. D. 1910.

EDWARD T. SANFORD,  
*U. S. District Judge, Holding the Circuit Court.*

I, H. M. Doak, clerk of the district court of the United States for the Middle District of Tennessee, having legal custody of the records of the circuit court and of the record in the above-styled cause, hereby certify that the foregoing is true, perfect and complete copy of the certificate of Hon. Edward E. Sanford, on file in said cause. In witness whereof I have hereunto signed my name and affixed the seal of the said district court, at my office at Nashville, Tennessee, this the 25th day of January, 1912.

[Seal District Court of the U. S., Middle District of Tenn.]

H. M. DOAK, *Clerk.*

Waiving the suggestion of a diminution of the record and a certiorari, it is hereby agreed that the foregoing may be substituted for the certificate of the trial Judge as it appears on page 140 of the

printed record in the above entitled cause in the Supreme Court of the United States, said cause being No. 22,321 in said court.

FRANK SLEMORES

*Sol. for Bonham et al.*

JOHN M. GAUT,

*Sol'r for Appellants.*

[Endorsed:] 396/22321. C. R. Shrape et al. vs. E. W. Bonham et al. Certified Copy of Judge's Certificate submitted with Motion to perfect record.

[Endorsed:] File No. 22,321. Supreme Court U. S. October Term, 1911. Term No. 396. C. R. Sharpe et al., Appellants, vs. E. W. Bonham et al. Certified copy of certificate of Judge of District Court. Filed Feb'y 26th, 1912.

7  
FILED.

FEB 23 1912

JAMES H. McKENNEY  
CLERK

IN THE  
**Supreme Court of the United States**

---

C. R. SHARPE, ET AL.

*Appellants*

vs.

E. W. BONHAM, ET AL

*Appellees*

No. 396 October Term 1911

---

Appeal from the Circuit Court of the United States for the  
Middle District of Tennessee

---

MOTION TO ADVANCE THE CASE AND HEAR  
THE SAME AND BRIEF IN SUPPORT  
OF THE MOTION

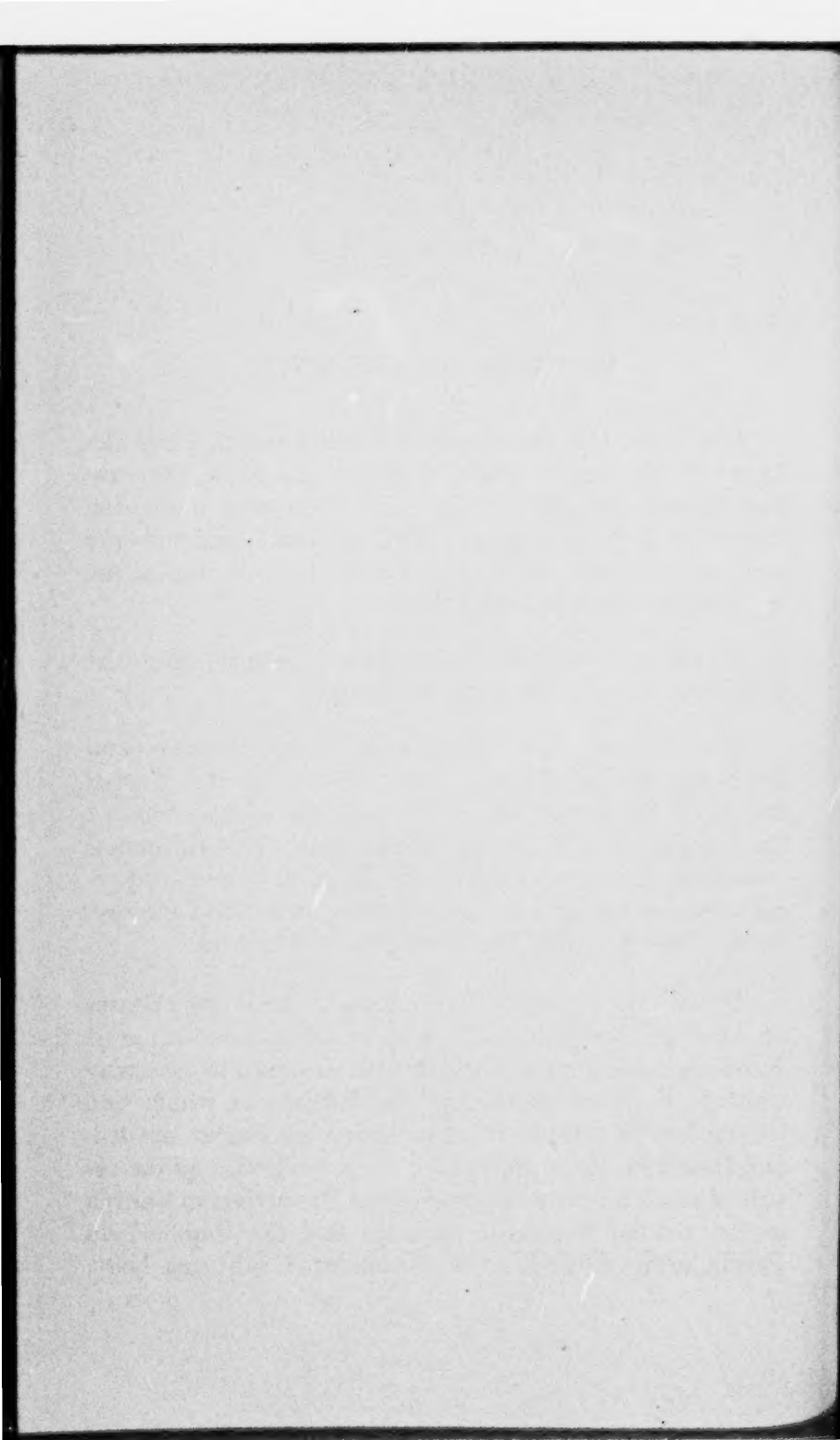
---

JOHN M. GAUT,

SOLICITOR FOR APPELLANTS.

---

---





## MOTION TO ADVANCE

Now come the appellants in this cause and move the Court to advance the cause and hear the same, the case having been brought to this Court by appeal under the Act of Congress of March 3, 1891, Section 5, and the only question involved in the appeal being the question of the jurisdiction of the Court below.

As the basis of this motion, the appellants state the following facts as shown by the record:

Prior to the year 1810 there arose in Tennessee and Kentucky in the Presbyterian Church in the United States of America a difference as to the construction of the Confession of Faith of that church. This difference caused, in 1810, a secession from the church, and the persons leaving the church formed the Cumberland Presbyterian Church. Both churches grew in numbers.

In 1903 the Presbyterian Church in the United States of America consummated a revision of its Confession of Faith, in consequence of which both churches in that year came to the conclusion that the differences which had theretofore separated the two bodies no longer existed, and therefore steps were taken for a reunion. As the result of much negotiation, in 1906 the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church were consolidated into one body,

styled the Presbyterian Church in the United States of America. This body has a membership of not far from a million and a half individuals, and has congregations and property interests practically over the whole of the United States.

A certain number of persons—clergymen and members of the Cumberland Presbyterian Church—opposed this reunion, and after it had been declared to be an accomplished fact by resolution of the General Assembly of the Presbyterian Church in the United States of America and by the General Assembly of the Cumberland Presbyterian Church, these dissatisfied persons, claiming to be the Cumberland Presbyterian Church, went on and formed an organization under that name. It was asserted by the consolidated body that the church property belonged to the consolidated body. It was asserted by the dissenters that the church property of the Cumberland Presbyterian Church had never passed to the consolidated body and remained with the dissenters.

These adverse claims resulted in litigation. The reunion has been declared to be valid and effectual by the courts of last resort in nine States of the Union, and invalid by the highest courts of two States.

Among other property belonging to the Cumberland Presbyterian Church was certain real estate, consisting of a lot and house of worship thereon situated in the City of Nashville, Tenn., known as Grace Church. The Grace Church congregation was a congregation in the Cumberland Presbyterian Church. Some nine months after the union there was a split in the congregation on the union

question, a small minority repudiating the union and organizing separately, and calling itself Grace Cumberland Presbyterian Church. The legal title to the property was held by trustees for the use of the congregation. The majority and minority each claimed to be the lawful congregation and hence the lawful beneficiary of the trust. The minority demanded the property and were about to take possession of it.

The purpose of the bill in this case is to have the Court declare that the proceedings taken to reunite the churches were valid and effectual for that purpose, and that this particular property was held in trust for that part of the congregation recognizing the union. It was not the purpose of the bill to determine who were the trustees, but who were the beneficiaries. This bill is found at page 1 of the record, and the amendment of it on page 86. To this bill as amended a plea to the jurisdiction of the Court was filed (R. 89). The Circuit Court sustained this plea, and dismissed the bill for want of jurisdiction, and so certified (R. 140).

The bill shows that the complainants are members of an unincorporated voluntary religious congregation in the Presbyterian Church in the United States of America. They are all citizens of States other than Tennessee, and bring the bill of complaint on behalf of themselves alone. The defendants are citizens of Tennessee. They are alleged to be members of the Cumberland Presbyterian Church, a voluntary religious organization unincorporated. The defendants, other than the trustees, are sued as representing not only themselves, but all other persons similarly situated and having a common interest.

The Court below held that in considering the question of jurisdiction the trustees should be aligned with the complainants, and as in this way there would be citizens of Tennessee complainant and citizens of Tennessee defendants, the Court would be without jurisdiction, such jurisdiction being perdedicated alone upon diversity of citizenship.

The decrees of the Court and certificate of the Judge (R. 139 and 140) are as follows:

DECREES—Be it remembered that this cause came on to be heard upon the motion of the complainants for the issuance of an injunction in accordance with the prayer of the bill and upon the motion of complainants to disallow the pleas of the defendants because said pleas were insufficient in law.

Upon consideration the court doth order, adjudge and decree that the motion for an injunction be disallowed and the court doth further order, adjudge and decree that said pleas are sufficient in law and are therefore allowed. The costs incident to the above motion will be paid by the complainants for which execution will issue as at law.

The following order dismissing the bill was entered, viz:

In this cause, upon this the 13th day of April, 1910, it appearing to the court that complainants have formally declined to plead further in the cause, having elected to stand upon the insufficien-

cy of the pleas of the defendant heretofore filed and said pleas having been heretofore adjudged to be sufficient, it is, therefore, ordered adjudged and decreed by the court that the bill be dismissed for want of jurisdiction; and that the complainants pay the costs of the cause, for which execution will issue as at law against them and their sureties upon the prosecution bond.

**CERTIFICATE**—In this cause I hereby certify that the judgment of dismissal herein made is based solely on the ground that the record does not show that the controversy involved is one, in my opinion, between citizens of different States, but that it appears from the record that three of the defendants, to-wit: I. T. Rhea, John M. Gaut and W. T. Hardison, Trustees, are not antagonistic to the complainants, and that, therefore, they must be aligned upon the same side of the controversy with the complainants; and, therefore, some of the defendants and some of the complainants are, in fact, citizens of the same State, and no other ground of jurisdiction appears from the record. The case is dismissed only for the reason above stated—that is, that the controversy is not between citizens of different States, and consequently the Circuit Court of the United States has no jurisdiction.

This certificate is made conformable to the Act of Congress of March 3, 1891, Chapter 517, and the opinion filed herein is made a part of the record,

and will be certified to and sent up as a part of the proceedings, together with this certificate.

Wherefore, appellants move the Court to advance the case to a speedy hearing on the question of jurisdiction, in order that, if the jurisdiction is sustained, the Lower Court may proceed to a hearing on the merits.

JOHN M. GAUT,  
*Solicitor for Appellants.*

## APPELLANTS' BRIEF ON MOTION TO ADVANCE THE CASE.

There is little to be said on this motion. This Court, by making Rule 32, has already determined that the motion must be granted, provided the case is one to which the rule applies. The language of the rule is that the described class of cases "will be advanced on motion and heard," etc. The only question for this Court now to determine is whether this case belongs to the described class. This question does not admit of controversy. The entire rule reads as follows:

"Cases brought to this Court by writ of error or appeal, under the Act of February 25, 1889, Chapter 236, or under Section 5 of the Act of March 3, 1891, Chapter 517, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion and heard under the rules prescribed by Rule 6, in regard to motions to dismiss writs of error and appeals."

The opinion of the Court (R. 138), the final decree (R. 140) and the certificate of the Judge of the Circuit Court (R. 140), all show that the Court dismissed the bill for want of jurisdiction.

The Judge certified that "the opinion filed herein is made part of the record and will be certified to and sent up as part of the proceedings, together with this certificate." R. 140; Motion 6.



The decree, after sustaining the plea,

adjudges and decrees "that the bill be dismissed for want of jurisdiction."

The certificate certifies, among other things, that

"the case is dismissed only for the reason above stated—that is, that the controversy is not between citizens of different States, and, consequently, the Circuit Court of the United States has no jurisdiction." R. 140; Motion 5.

The certificate further certifies that "this certificate is made conformable to the Act of Congress of March 3, 1891, Chapter 517." R. 140; Motion 5-6.

The Act of 1891, Chapter 517, provides that appeals and writs of error from the Circuit Courts

"shall be had only in the Supreme Court of the United States or in the Circuit Court of Appeals hereby established according to the provisions of this Act regulating the same."

Section 5 provides for appeals direct to the Supreme Court "in any case in which the jurisdiction of the court is in issue," etc.

This being a case brought to this Court by appeal under that Act, and the only question in issue being the question of the jurisdiction of the Court below, the case comes directly within the class provided for by Rule 32, and under that rule the motion must be sustained.

JOHN M. GAUT,

*Solicitor for Appellants.*

8  
Office Supreme Court, U. S.  
FILED.

MAR 4 1912

JAMES H. MCKENNEY,  
CLERK.

---

# IN THE SUPREME COURT OF THE UNITED STATES.

No. 396, October Term, 1911.

---

C. R. SHARPE, ET AL.,  
*Appellants,*

VS.

E. W. BONHAM, ET AL.,  
*Appellees.*

---

Appeal from the Circuit Court of the United States  
for the Middle District of Tennessee.

---

Statement of Appellees on Motion of  
Appellants to Advance.

---

FRANK SLEMONS,  
J. H. ZARECOR'  
W. B. LAMB,  
W. C. CALDWELL,  
*Solicitors for Appellees.*



IN THE  
Supreme Court of the United States.

No. 396 October Term 1911.

C. R. SHARPE, ET AL., Appellants,

vs.

E. W. BONHAM, ET AL., Appellees.

Statement of Appellees on Motion of Appellants to Advance.

**STATEMENT.**

May It Please the Court:

The question on this appeal is one of jurisdiction only.

The property in question is a house of worship in the City of Nashville, Tennessee, erected and owned and used by the local congregation of the Cumberland Presbyterian Church, and known as Grace Cumberland Presbyterian Church. The lot of ground on which the building stands was conveyed, in the year 1890, to W. T. Hardison, Isaac T. Rhea, Nat. F. Dorch and John M. Gaut, as "trustees and their successors in trust for the use and benefit" of that local church. R. 85.

After May 24, 1906, a division arose in the congregation of that church, the then pastor and a majority of the elders and non-official members going into the Presbyterian Church in the United States of America by virtue of a union, alleged to have been consummated on that day, between that Church and the Cumberland Presbyterian Church at large, the other elders and non-official members remaining in Grace Cumberland

(2)

Presbyterian Church as before. Those going into the Presbyterian Church U. S. A. assumed and held the exclusive possession, use and control of the house of worship by and with the consent of the trustees; and those adhering to the Cumberland Presbyterian Church secured a pastor and rented another house of worship near by.

Each faction went on after that as a separate congregation of worshipers, one of them having representation and recognition in the proper Presbytery and Synod and in the General Assembly of the Presbyterian Church, U. S. A., and the other one having representation and recognition in the proper Presbytery and Synod and in the General Assembly of the Cumberland Presbyterian Church. Such was the situation when the present litigation arose.

In the meantime and on account of the alleged union, like divisions occurred and two factions appeared in many of the local congregations of the Cumberland Presbyterian Church in the State of Tennessee; and, in July, 1906, those officers and members of the congregations at Fayetteville and McKenzie and Kenton, Tennessee, and some other persons, who like themselves had gone into the Presbyterian Church U. S. A. through the alleged union, filed, in the Chancery Court at Fayetteville, an injunction bill, with precisely the same allegation as the present bill, except as to local facts, and seeking the same ultimate relief with respect to houses of worship, against the officers and members of those congregations, and some other persons, who like themselves adhered to the Cumberland Presbyterian Church. R. 96. That case, (*Landrith vs. Hudgins*, 121 Tenn., 556), was finally decided on its merits by the Supreme Court of Tennessee, April 3, 1909, the decision being against the validity of the alleged union and awarding the property to those adhering to the Cumberland Presbyterian Church. R. 94.

On the 14th day of April, 1909, just eleven days after that decision by the Supreme Court of Tennessee, the present bill

was filed in the Circuit Court of the United States for the Middle District of Tennessee.

This bill was brought by C. R. Sharpe and three other persons alleged to be citizens of other states than Tennessee, as members of that faction of Grace Cumberland Presbyterian Church then in the Presbyterian Church U. S. A., against E. W. Bonham and the other elders and the pastor and members of the other faction, calling itself Grace Cumberland Presbyterian Church, and also against Isaac T. Rhea, John M. Gaut and W. T. Hardison, three of the trustees named in the deed, (the other one having died and his place not having been filled), all of the defendants being citizens of Tennessee.

The defendants were not all sued as members of the faction calling itself Grace Cumberland Presbyterian Church, as mistakenly stated on page 1 of Brief of Appellants. In fact the trustees, Rhea, Gaut and Hardison, were not so sued, but were in the bill several times excepted from that faction. R. 1, 14 and 15.

The bill alleged, in substance, that the house of worship in question is situated on a lot purchased by Grace Cumberland Presbyterian Church, an unincorporated religious society, "some fifteen years ago," by deed, conveying the legal title to the "defendants, I. T. Rhea, John M. Gaut and W. T. Hardison," (and another who has since died), as trustees; that religious services were regularly conducted in this house of worship by a pastor employed by the session and members of that church as a local congregation of the Cumberland Presbyterian Church at large, for many years and up to May 24, 1906, after which a division in the congregation occurred and two factions were formed on account of the alleged union between the Cumberland Presbyterian Church at large and the Presbyterian Church in the United States of America; that the complainants are members of that faction which recognized the union and went into the Presbyterian Church U. S. A., and which ever after the division has been and now is in the ex-

clusive possession and use of this house of worship, while the defendants, "except Rhea, Gaut and Hardison," are the pastor and elders of the other faction," calling itself Grace Cumberland Presbyterian Church, and occupy another house of worship." R. 1-3.

The bill then set out in great detail the matters leading up to the alleged union, the steps taken for its accomplishment, the alleged action of those opposed to it, and made the claim that the legal effect of the alleged union was to pass into the Presbyterian Church U. S. A. all houses of worship and other property previously belonging to the Cumberland Presbyterian Church and to the congregations thereof, (R. p. 3 beginning with line 8 from the bottom and ending with line 7 of page 14); the statements, allegations and claim as to those matters being in the same language as that employed in the bill in the case of Landrith vs. Hudgins, previously decided by the Supreme Court of the State, (R. p. 97, beginning with line 6 from the top and ending with 1st line on page 108); but the fact that such a suit had been brought in the State Court and had finally been decided on its merits, adversely to the claim of the complainants therein, only eleven days before by the Supreme Court of the State, was not mentioned in the present bill.

After that the bill alleged that the complainants are advised and believe that the "union was legally formed, and is valid;" that the faction to which they belong "is entitled to the exclusive use of the said property;" that the defendant trustees hold the legal title for that faction; that its session has the right to control for it the possession and use of the property; that its pastor has the exclusive right to conduct services therein; that a notice has just been served by the other faction that unless possession is surrendered to it, suit for its recovery will be commenced at once; and, finally, that the trustees and the elders of the faction of which complainants are members, though requested to bring suit in behalf of that faction, "have declined to do so," because unable to maintain a suit in the Federal Court.



The prayer of the bill was for relief appropriate to the allegations and for an injunction against all defendants, except the trustees.

E. W. Bonham and the other defendants of the Cumberland Presbyterian faction filed a plea to the jurisdiction of the court. In that plea it was averred, among other things, that "the other defendants, John M. Gaut, Isaac T. Rhea and W. T. Hardison \* \* \* are improperly and collusively joined as defendants for the purpose of creating a case cognizable in this honorable court," (R. 90); and "that when the parties actually made are properly placed on the record according to interest the defendants, Rhea, Gaut and Hardison, will be found on the same side of the controversy with the complainants." R. 92.

A motion to disallow the plea for insufficiency in law was made and overruled by the court, and the plea sustained. The complainants refusing to plead further, the bill was dismissed for want of jurisdiction. Whereupon complainants appealed and assigned errors. R. 139-141.

Appellees think the judgment should be affirmed.

They have no objection to offer to the advancement and early hearing of the case.

Respectfully submitted,

FRANK SLEMONS,  
J. H. ZARECOR,  
W. B. LAMB,  
W. C. CALDWELL,  
Solicitors for Appellees.

FILED.

FEB 23 1912

JAMES H. McKENNEY,

---

**IN THE SUPREME COURT OF THE  
UNITED STATES**

---

**C. R. SHARPE, ET AL.**

*Appellants*

*vs.*

**E. W. BONHAM, ET AL**

*Appellees*

**No. 396 October Term 1911**

---

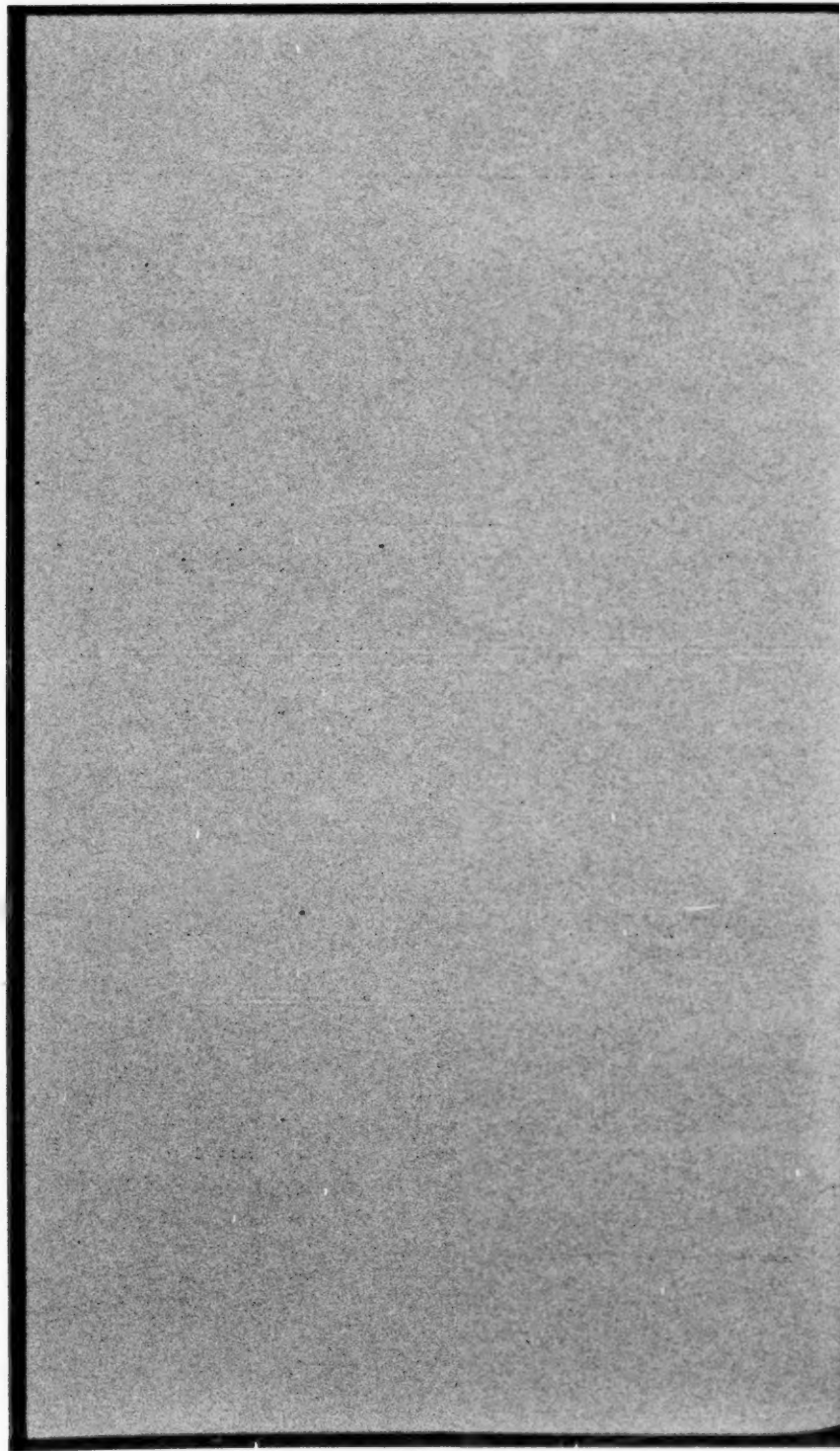
**Appeal from the Circuit Court of the United States for  
the Middle District of Tennessee**

---

**JOHN M. GAUT,**

**SOLICITOR FOR APPELLANTS.**

---



## STATEMENT.

The original bill will be found at page 1. The amendment of the bill at page 86. To this bill as amended a plea was filed. (R., 89.) The court sustained this plea, and held that the case was one of which the United States Circuit Court had no jurisdiction. (Opinion, R., 138 and 139.) The complainants declined to plead further as to the question of jurisdiction and elected to stand upon the insufficiency of the plea. Thereupon the court dismissed the bill for want of jurisdiction and made the ordinary certificate. (R., 140.) The bill was filed in the Circuit Court of the United States for the Sixth Circuit and Middle District of Tennessee. Briefly stated the bill as amended makes the following case:

The complainants are members of an unincorporated voluntary religious association called Grace Church, of Nashville, Tenn. This association is a congregation in the Presbyterian Church in the United States of America. Complainants are all citizens of States other than Tennessee.

The defendants are citizens of Tennessee. They are alleged to be members of another voluntary and unincorporated religious organization in Nashville, Tenn., calling itself Grace Cumberland Presbyterian Church.

The defendants are sued as representing not only themselves but all other persons similarly situated and having a common interest.

The court below held that in considering the question of jurisdiction the three persons made defendants as trustees of the congregation, the holders of the mere dry legal title to the property, should be aligned with the complainants, and as in this way there would be citizens of Tennessee complainants and citizens of Tennessee defendants, the court would be without jurisdiction, such jurisdiction being predicated alone upon diversity of citizenship.

A brief statement of the occasion for this litigation will suffice.

In the year 1810 there was a secession from the Presbyterian Church in the United States of America, and the persons leaving the church formed the Cumberland Presbyterian Church. Both churches grew in numbers. About the year 1903 both churches came to the conclusion that the differences which had theretofore separated the two bodies no longer existed, and therefore steps were taken for a re-union. The constitution of both of these voluntary religious societies was the same; that is, in each there was a session composed of ruling elders and a pastor, governing the individual church; a body over them called a presbytery, composed of ministers and selected elders from each church within a prescribed boundary; another body over that, a synod, composed of clergymen and selected elders from the churches in a boundary that embraced a number of presbyteries; and over that the General Assembly, composed of persons selected by the presbyteries—clergymen and ruling elders. Each of these judicatories has a certain legislative as well as judicial character.

As a result of much negotiation in 1906 the Presby-

terian Church in the United States of America and the Cumberland Presbyterian Church were consolidated into one body, styled the Presbyterian Church in the United States of America. This body has a membership of not far from a million and a half individuals, and has congregations and property interests practically over the whole of the United States.

A certain number of persons—clergymen and members of the Cumberland Presbyterian Church—opposed this reunion, and after it had been declared to be an accomplished fact by resolution of the General Assembly of the Presbyterian Church in the United States of America, and by the General Assembly of the Cumberland Presbyterian Church, these dissatisfied persons, claiming to be the Cumberland Presbyterian Church, went on and formed, or continued in, an organization under that name. It was asserted by the consolidated body that the church property belonged to the consolidated body. It was asserted by the dissenters that the church property of the Cumberland Presbyterian Church had never passed to the consolidated body and remained with the dissenters.

These adverse claims resulted in litigation. The reunion has been declared to be valid and effectual in *Mack v. Kime*, 129 Ga., 1, 58 S. E., 184; *Permanent Committee of Missions v. Pacific Synod (Cal.)*, 106 Pac. Rep., 395; *Ramsey v. Hicks (Ind.)*, 91 N. E., 344; *First Presbyterian Church v. First Cumberland Presbyterian Church (Ill.)*, 91 N. E., 761; *Wallace v. Hughes (Ky.)*, 115 S. W., 684; *Brown v. Clark*, 102 Tex., 324. 116 S. W., 364; *Sanders v. Baggerly (Ark.)*, 131 S. W., 49, and *Harris v. Cosby*, —Ala., —, 55 Southern Rep., 231; and *Caroth-*

ers v. Moseley (Miss.), 55 So. Rep., 881. It, however, has been declared invalid in the highest courts of two States: Landrith v. Hudgins, 121 Tenn., 556, 120 S. W., 783, and Boyles v. Roberts (Mo.), 121 S. W., 805.

Among other property belonging to the Cumberland Presbyterian Church was certain real estate in Nashville, Tenn., consisting of a lot and house of worship located thereon. The deed shows that the property was to be held by the trustees "in trust for the use and benefit of a congregation of the Cumberland Presbyterian Church to be hereafter organized in South Nashville." R., 85.

The property so held in trust is of the value of about \$20,000. About nine months after the union was consummated a small minority of the members of Grace Church repudiated the union and separated themselves from the majority and effected a separate organization, calling itself Grace Cumberland Presbyterian Church, and demanded of the majority the exclusive possession of the church property. They assumed to be in law the sole beneficiaries of the trust. The complainants insist that the class to which they belong, viz: the members who recognize the union, are the lawful beneficiaries. The purpose of the bill was to have the court declare that the proceedings taken to reunite the churches was valid and effectual for that purpose, and that this particular property belonged to those members of the congregation who recognized the united denomination and that they were the *cestui que trustent* of the trustees. It was not the purpose of the bill to disturb the legal title, but only to have the court declare for whom the trustees held.

As stated above, the learned court held that the trus-



tees should be aligned with the complainants, and therefore that the bill should be dismissed for want of jurisdiction.

### ASSIGNMENT OF ERRORS.

The following is the assignment of errors:

First.—That the court erred in allowing the plea in abatement and denying the motion for an injunction.

Second.—That the court erred in holding that the defendants—I. T. Rhea, John M. Gaut and W. T. Hardison, Trustees—are necessary and indispensable parties to this cause and that their interest in the subject-matter herein involved must be considered by the court.

Third.—That the court erred in holding that in the absence of any showing of an antagonism between defendants I. T. Rhea, John M. Gaut and W. T. Hardison, Trustees, and the complainants, said defendants are to be aligned upon the same side of the controversy with the complainants in this suit.

Fourth.—That the court erred in holding that when the parties are properly aligned according to interest the defendant trustees will be found on the same side of the controversy with the complainants.

Fifth.—That the court erred in holding that this cause was not a controversy between citizens

of different States and that the court did not have jurisdiction thereof.

Sixth.—The court erred in dismissing complainants' bill.

It should perhaps be explained that the appeal was originally taken by "C. R. Sharpe et al." without otherwise naming the appellants. That there might be no possible doubt that all of the complainants joined in the appeal a new and independent appeal was taken, each of the complainants being named therein, a new bond being given and new citations being issued and served.

## ARGUMENT.

The bill is one of a character that has been often recognized by courts dealing with equitable procedure. Complainants are a few of a large class of persons claiming to be the lawful beneficiaries of a trust. The trust is of such character that the benefits of it consist in the actual occupation and use of the trust property—a house for religious worship. The complainants and the others of their class were and are in such occupation and use of the property, but defendants (other than the trustees) and those associated with them in interest and organically, and cooperating with them, constitute another large class of persons claiming to be the beneficiaries of the trust. These defendants and associates had demanded the surrender to them of the trust property, and were threatening, preparing and about to take unlawful possession of it. Complainants therefore filed this bill to have the court declare that they (complainants) and the others of their class, are the true and lawful beneficiaries of the property, title to which is in the name of the trustees made defendants so that the court can determine and declare by its decree whether the trustees hold the legal title in trust for the one large body of persons or the other. The bill also prays the court to enjoin the defendants claiming to be the beneficiaries, and their associates, from obstructing and defeating the carrying out of the trust. Said defendants are sued in their own right and as the representatives of their associates in interest. Complainants, as in Watson

v. Jones, 13 Wallace, 679, sued in their own behalf alone. That case grew out of a division of the Synod of Kentucky of the Presbyterian Church of the United States of America. A certain proceeding had been taken in the State courts to determine who were the lawfully elected elders (and hence the governing body) of the Walnut Street Church of Louisville, Ky., resulting in a decision in favor of what we may call the Southern church. Thereupon a bill was filed in the Circuit Court of the United States for the District of Kentucky by certain persons who alleged that they were citizens of Indiana and members of the Walnut Street Church. They made parties defendant the elders, the church corporation and certain persons who had been elected as trustees of the church. Their prayer for relief was that it should be declared that the property of the church should be managed for the use and benefit of themselves and other members of the congregation adhering to the Northern church. The defendants, trustees, answered, admitting the allegations of the bill and stating that though requested, they had refused to prosecute legal proceedings in the matter because, as they thought, any effort to that end in the courts of the State of Kentucky would be useless. The result of the case was to grant the relief prayed for, the Circuit Court holding, and this court agreeing therewith, that the question involved in the State court suit was simply who were the elders of the church; whereas the question involved in the instant suit was, for whose benefit should the property of the church be held and managed? There was no suggestion in this case that the corporation or trustees should be aligned with the complainant any more than with the defendant. Indeed, on which side they should be was there, as it is here, the very matter in issue.

Any one or more of the beneficiaries of a trust who, with their co-beneficiaries, are entitled to possess and use the trust property, may maintain a bill in equity to have their rights declared and protected against wrongdoers. Or one or more may maintain such a bill in their own behalf and in behalf of all of the others of their class. Any question as to whether the bill should be filed the one way or the other is not a jurisdictional question but a question as to whether there is an absence of necessary parties, which is a question that can arise only on the consideration of the merits of the controversy. The learned Circuit Judge so held.

The ground on which the court below based its decision was that, in his opinion, the church trustees, "in the absence of any showing of antagonism between them and the complainants, are to be aligned on the same side of the controversy with the complainants." (Opinion, R., 138.) That the learned Judge was clearly in error in assuming that there is any such rule or principle of alignment we think is decided by this court in the recent case of *Helm vs. Zarecor*, opinion by Mr. Justice Hughes, handed down November 6, 1911, Supreme Court Reporter, Vol. 32, p. 10, Dec. No. 1911. In that case the title to the property was held by a corporation; in this case the legal title is held by individuals as trustees. In that case the court says "The Board (the corporation) is simply a title-holder (*Watson v. Jones*, 13 Wall., 679, 720, 20 L. Ed., 666, 672), an instrumentality, the mastery of which is in dispute." (P. 12.) In *Watson v. Jones* this court says that "the trustees were the mere nominal title-holders." In the case now before the court they are clearly nothing more. See deed R., 85. Again, in *Helm v. Zarecor*, this court

says: "To align the corporation itself with the complainants is virtually to decide the merits in their favor." The same is true as to the trustees in this case. In that case the court says that "the corporation was properly made a party defendant." The same is true of the trustees in this case. There is no material difference between the two cases, and the upholding of the jurisdiction in *Helm v. Zarecor* in effect upholds the jurisdiction in this.

The plea in this case avers that "complainants have in their bill improperly and collusively made and omitted parties complainant and parties defendant," etc. The same averment was made in the plea in *Helm v. Zarecor* and this feature of the plea is so completely covered by the opinion in the latter case that we forbear comment on it.

In our opinion, the cases of *Watson v. Jones* and *Helm v. Zarecor* are conclusive of this case. They, in effect, concur in holding that this suit was rightfully and properly brought, that there was no legal propriety in aligning the trustees with the complainants, that the plea should have been held insufficient and the jurisdiction of the court below maintained.

JOHN M. GAUT,  
*Solicitor for Appellants.*

MAR 4 1912

JAMES H. MCKENNEY,  
CLERK

# IN THE SUPREME COURT OF THE UNITED STATES.

No. 396, October Term, 1911.

C. R. SHARPE, ET AL.,  
*Appellants,*

VS.

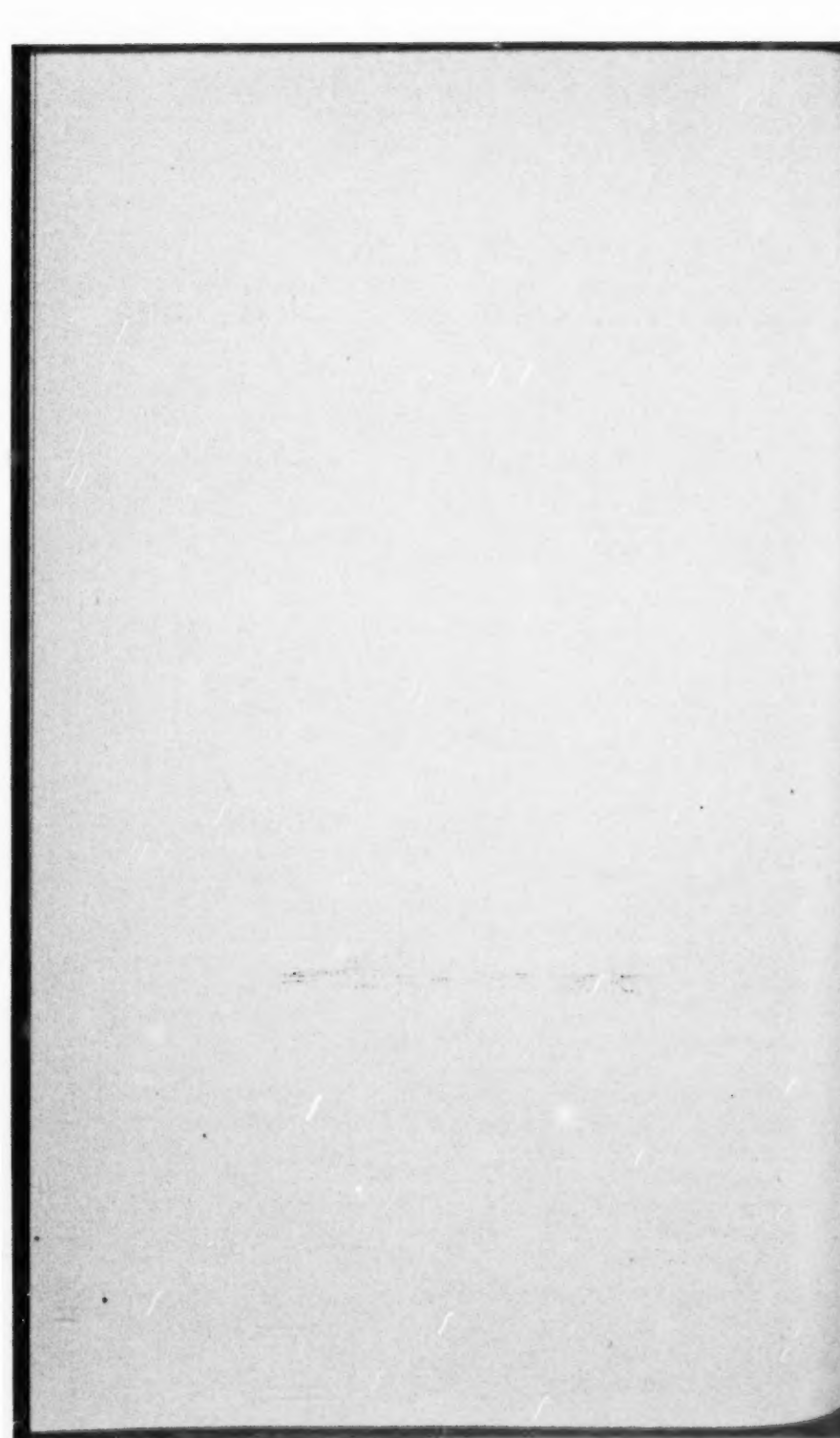
E. W. BONHAM, ET AL.,  
*Appellees.*

Appeal from the Circuit Court of the United States  
for the Middle District of Tennessee.

## Brief for Appellees.

FRANK SLEMONS,  
J. H. ZARECOR'  
W. B. LAMB,  
W. C. CALDWELL,  
*Solicitors for Appellees.*





IN THE  
Supreme Court of the United States.

No. 396 October Term 1911.

C. R. SHARPE, ET AL., Appellants,

vs.

E. W. BONHAM, ET AL., Appellees.

BRIEF FOR APPELLEES.

STATEMENT.

May It Please the Court:

The question on this appeal is one of jurisdiction only.

The property in question is a house of worship in the City of Nashville, Tennessee, erected and owned and used by the local congregation of the Cumberland Presbyterian Church, and known as Grace Cumberland Presbyterian Church. The lot of ground on which the building stands was conveyed, in the year 1890, to W. T. Hardison, Isaac T. Rhea, Nat. F. Dortch and John M. Gaut, as "trustees and their successors in trust for the use and benefit" of that local church. R. 85.

After May 24, 1906, a division arose in the congregation of that church, the then pastor and a majority of the elders and non-official members going into the Presbyterian Church in the United States of America by virtue of a union, alleged to have been consummated on that day, between that Church and the Cumberland Presbyterian Church at large, the other elders and non-official members remaining in Grace Cumberland

Presbyterian Church as before. Those going into the Presbyterian Church U. S. A. assumed and held the exclusive possession, use and control of the house of worship by and with the consent of the trustees; and those adhering to the Cumberland Presbyterian Church secured a pastor and rented another house of worship near by.

Each faction went on after that as a separate congregation of worshipers, one of them having representation and recognition in the proper Presbytery and Synod and in the General Assembly of the Presbyterian Church, U. S. A., and the other one having representation and recognition in the proper Presbytery and Synod and in the General Assembly of the Cumberland Presbyterian Church. Such was the situation when the present litigation arose.

In the meantime and on account of the alleged union, like divisions occurred and two factions appeared in many of the local congregations of the Cumberland Presbyterian Church in the State of Tennessee; and, in July, 1906, those officers and members of the congregations at Fayetteville and McKenzie and Kenton, Tennessee, and some other persons, who like themselves had gone into the Presbyterian Church U. S. A. through the alleged union, filed, in the Chancery Court at Fayetteville, an injunction bill, with precisely the same allegation as the present bill, except as to local facts, and seeking the same ultimate relief with respect to houses of worship, against the officers and members of those congregations, and some other persons, who like themselves adhered to the Cumberland Presbyterian Church. R. 96. That case, (*Landrith vs. Hudgins*, 121 Tenn., 556), was finally decided on its merits by the Supreme Court of Tennessee, April 3, 1909, the decision being against the validity of the alleged union and awarding the property to those adhering to the Cumberland Presbyterian Church. R. 94.

On the 14th day of April, 1909, just eleven days after that decision by the Supreme Court of Tennessee, the present bill

was filed in the Circuit Court of the United States for the Middle District of Tennessee.

This bill was brought by C. R. Sharpe and three other persons alleged to be citizens of other states than Tennessee, as members of that faction of Grace Cumberland Presbyterian Church then in the Presbyterian Church U. S. A., against E. W. Bonham and the other elders and the pastor and members of the other faction, calling itself Grace Cumberland Presbyterian Church, and also against Isaac T. Rhea, John M. Gaut and W. T. Hardison, three of the trustees named in the deed, (the other one having died and his place not having been filled), all of the defendants being citizens of Tennessee.

The defendants were not all sued as members of the faction calling itself Grace Cumberland Presbyterian Church, as mistakenly stated on page 1 of Brief of Appellants. In fact the trustees, Rhea, Gaut and Hardison, were not so sued, but were in the bill several times excepted from that faction. R. 1, 14 and 15.

The bill alleged, in substance, that the house of worship in question is situated on a lot purchased by Grace Cumberland Presbyterian Church, an unincorporated religious society, "some fifteen years ago," by deed, conveying the legal title to the "defendants, I. T. Rhea, John M. Gaut and W. T. Hardison," (and another who has since died), as trustees; that religious services were regularly conducted in this house of worship by a pastor employed by the session and members of that church as a local congregation of the Cumberland Presbyterian Church at large, for many years and up to May 24, 1906, after which a division in the congregation occurred and two factions were formed on account of the alleged union between the Cumberland Presbyterian Church at large and the Presbyterian Church in the United States of America; that the complainants are members of that faction which recognized the union and went into the Presbyterian Church U. S. A., and which ever after the division has been and now is in the ex-

clusive possession and use of this house of worship, while the defendants, "except Rhea, Gaut and Hardison," are the pastor and elders of the other faction, calling itself Grace Cumberland Presbyterian Church, and occupying another house of worship." R. 1-3.

The bill then set out in great detail the matters leading up to the alleged union, the steps taken for its accomplishment, the alleged action of those opposed to it, and made the claim that the legal effect of the alleged union was to pass into the Presbyterian Church U. S. A. all houses of worship and other property previously belonging to the Cumberland Presbyterian Church and to the congregations thereof, (R. p. 3 beginning with line 8 from the bottom and ending with line 7 of page 14); the statements, allegations and claim as to those matters being in the same language as that employed in the bill in the case of Landrith vs. Hudgins, previously decided by the Supreme Court of the State, (R. p. 97, beginning with line 6 from the top and ending with 1st line on page 108); but the fact that such a suit had been brought in the State Court and had finally been decided on its merits, adversely to the claim of the complainants therein, only eleven days before by the Supreme Court of the State, was not mentioned in the present bill.

This bill further alleged:

"Complainants are advised and believe that said union was legally formed, and is valid, and that the union congregation, as part of the re-united Church, is entitled to the exclusive use of said property; that the Trustees of said Church, who are Isaac T. Rhea, John M. Gaut and W. T. Hardison, hold the legal title to said property in trust for the congregation which is in connection with the re-united Church; that the elders of said union congregation have the right to control for the congregation the possession and use of said property and that the pastor employed by them, who is Rev. W. T. Rogers, D.D., has the exclusive right to conduct services therein. \* \* \*

"Since this bill was prepared a written notice purporting to come from the session of Grace Cumberland Presbyterian Church, has been served by the defendant, E. W. Bonham, on the Clerk of the Session of Grace Church, declaring that unless the possession of the Church is turned over to Grace Cumberland Presbyterian Church by noon, April 14, 1909, they will begin suit for the same. Complainants have requested and demanded of the trustees of the said Church, and of the elders of said Church, that they institute legal proceedings for the purpose of protecting said property and the rights of the members of said congregation, but being unable to maintain a suit in this Court they have declined to do so." P. 14.

The prayer of the bill was:

"That upon final hearing the Court decree that the Trustees of said Church, named herein, and their successors and associates in office, hold the title to said property in trust for the exclusive use and benefit of the congregation of Grace Church, the congregation of which W. T. Rodgers is pastor and which adheres to the said united Church; that the Session of said Church has the exclusive right to control the possession and use of the property, and the pastor employed by it the sole right to occupy its pulpit and conduct its services; that the defendants to this bill, excepting said Rhea, Gaut and Hardison, and all whom they represent, including all the members of Grace Cumberland Presbyterian Church, and all who are combined or associated with them, be restrained by injunction from taking, or attempting to take, possession of the house of worship described herein, or other property contained therein or pertaining thereto, and from interfering with the pastor of said Church, or his successor or successors, in the conduct of the religious exercises or other functions as pastor; or from in any manner disturbing or interfering with complainants, said congregation, its pastor, officers and

members, in the possession, use and enjoyment of said property." P. 15.

The only ground of Federal Jurisdiction alleged in the bill was diversity of citizenship.

The defendants, Rhea, Gaut and Hardison, made no defense.

But the other defendants, Bonham and his associates, constituting the Cumberland Presbyterian faction, filed a plea to the jurisdiction of the Court. In that plea they said:

"In the prosecution of the alleged cause of action the other defendants, John M. Gaut, Isaac T. Rhea and W. T. Hardison, who are alleged to hold the legal title of the property described and involved, are indispensable parties complainant, and yet, as these defendants aver, those persons are improperly and collusively joined as defendants for the purpose of creating a case cognizable in this Honorable Court." R. 90.

Then followed averments, in substance, that the pastor, elders and members of the other faction, the Presbyterian Church U. S. A., were likewise indispensable parties and had been improperly and collusively omitted as parties for the purpose of creating a case cognizable in the Federal Court; that the complainants and the other members of the faction to which they belong can have no interest in this Cumberland Presbyterian house of worship, except by virtue of the alleged union, which the Court of last resort in Tennessee has adjudged to be unconstitutional and void; that the present bill was brought, and parties made improperly and collusively for the purpose of defeating that decision, and re-opening in the Federal Courts a controversy practically settled already in the State Courts.

The plea continued:

"They (these defendants) say that when the parties actually made are properly placed on the record



according to interest the defendants, Rhea, Gaut and Hardison, will be found on the same side of the controversy with the complainants and that there will then appear no proper controversy between citizens of different states; \* \* \*

"These defendants say therefore that this honorable court is without jurisdiction of the alleged controversy so improperly and collusively presented for the purpose of creating a case cognizable in this honorable court, and with a view of re-opening therein a controversy which has already been settled, so far as the legal principles on which it depends are concerned, by the Court of last resort in the State of Tennessee, within whose bounds the house of worship in question is situated." R. 92.

A motion to disallow the plea for insufficiency in law was made by complainants and overruled by the Court, and the plea sustained. Complainants refused to plead further and the bill was dismissed for want of jurisdiction. Whereupon the complainants appealed to this Court and assigned errors. R. 139-141.

### ARGUMENT.

The averments of fact in the plea to the jurisdiction were admitted to be true by the motion to disallow the plea for insufficiency in law. *Farley vs. Kittson*, 120 U. S., 303, 314; *United States vs. California and Oregon Land Co.*, 148 U. S., 31, 39; *United States vs. Telephone Co.*, 29 Fed., 17, 33; *Kellner vs. Mutual Life, etc.*, 43 Fed., 623; *Burrell vs. Hackley*, 35 Fed., 833; *Stephens vs. Smartt*, 172 Fed., 466; *Stewart vs. Mitchell*, 172 Fed., 907; 1 Beach Mod. Eq. Pr., Sec. 36, p. 348.

In *Farley vs. Kittson*, *supra*, the Court said:

"The plaintiff may either set down the plea for argument, or file a replication to it. If he sets down the plea for argument, he thereby admits the truth of all the facts stated in the plea, and merely denies their

sufficiency in point of law to prevent a recovery.”  
120 U. S., 314.

That language was quoted with approval and adopted by the Court in the case of the United States vs. California and Oregon Land Co., 148 U. S., at page 39.

Section 5 of Chapter 137 of the Judiciary Act of 1875, (18 Statutes at large, 470), provides:

“That if, in any suit commenced in the Circuit Court \* \* \* it shall appear to the satisfaction of said Circuit Court \* \* \* that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, or that the parties to said suit have been improperly or collusively made and joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable \* \* \* under this Act, the Circuit Court shall proceed no further therein, but shall dismiss the suit.”

The plea brings this case under the condemnation of that Statute, in both clauses, and subjects it to imperative dismissal on each of the grounds provided therein.

The averment that, “the other defendants, John M. Gaut, Isaac T. Rhea and W. T. Hardison, \* \* \* are improperly and collusively joined as defendants for the purpose of creating a case cognizable in this honorable court,” (R. 90), being admitted, presents the case under both clauses of the statute, and especially and in terms under the second clause, against improper and collusive joinder of parties, and requires that the “Circuit Court shall proceed no further therein, but shall dismiss the suit.” And the averment that “when the parties actually made are properly placed on the record *according to interest*, the defendants, Rhea, Gaut and Hardison, will be found on the same side of the controversy with the complainants,” (R. 92), being admitted, requires that those three defendants, who are citizens of Tennessee and so impleaded, be

aligned with the complainants, thereby defeating the requisite diversity of citizenship and showing, in the language of the first clause of the statute, "that such suit does not really and substantially involve a dispute or controversy within the jurisdiction of said Circuit Court," which likewise demands that the "Circuit Court shall proceed no further therein, but shall dismiss the suit."

So it appears, we submit, that the present suit is doubly condemned by the Statute in question, and that the Court below could do nothing less than dismiss it for want of jurisdiction, as was done.

It is well settled that in a case where the jurisdiction of the Court depends alone on diversity of citizenship, the Court will, under the Statute mentioned, arrange the parties to the litigation as their interest may appear from the allegations of the bill, or from the admitted averments of the plea as in this instance, or from the proof, and if, under such arrangement, citizens of the same state be found on opposite sides of the controversy, the Court can "proceed no further," but must "dismiss the suit," for want of jurisdiction. Removal Cases, 100 U. S., 457; *Pacific R. R. Co. vs. Ketchum*, 101 U. S., 289; *Harter vs. Kernochan*, 103 U. S., 562; *Detroit vs. Dean*, 106 U. S., 537; *Wilson vs. Oswego Township*, 151 U. S., 56; *Merchants' Cotton Press Co. vs. Insurance Co.*, 151 U. S., 368; *Evers vs. Watson*, 156 U. S., 527; *City of Dawson vs. Columbia Trust Co.*, 197 U. S., 178; *Venner vs. Great Northern Ry.*, 209 U. S., 24; *Steele vs. Culver*, 211 U. S., 26; *Southern Realty Investment Co. vs. Walker*, 211 U. S., 603; *First National Bank vs. Radford Trust Co.*, 80 Fed., 573; *Stephens vs. Smartt*, 172 Fed., 466; *Stewart vs. Mitchell*, 172 Fed., 907.

Among the many cases, emphasizing the duty of the Court, under the second clause of Section 5 of the Statute, to dismiss the suit whenever and however it may appear that parties have been improperly or collusively made or joined for the purpose of creating a case cognizable in the Circuit Court, are: *Williams vs. Nattawa*, 104 U. S., 209; *Farmington vs.*

Pillsbury, 114 U. S., 144; Leigh Min. & Mfg. Co. vs. Kelly, 160 U. S., 340; Miller & Lux vs. East Side Canal Co., 211 U. S., 293; Southern, etc., vs. Walker, Ib., 603; Steele vs. Culver, Ib. 26; City of Dawson vs. Columbia Trust Co., 197 U. S., 178.

The concluding paragraph of the plea, (R. 92), it is believed, brings the present case under the ruling of this Court in the case of the City of Dawson vs. Columbia Trust Co., 197 U. S., 178, as stated in the first head-note thereof, as follows:

“An arrangement of parties which is merely a contrivance between friends to found jurisdiction on diverse citizenship will not avail, and when it is obvious that a party who is really on the complainant's side has been made a defendant for jurisdictional reasons, and for the purpose of re-opening, in the United States Courts, a controversy already decided in the State Courts, the Court will look beyond the pleadings and arrange the parties according to their actual sides in the dispute.”

It is erroneously assumed on page 9 of the Brief for appellants that the Court below based its decision alone on the ground that the trustees, “in the absence of any showing of antagonism between them and the complainants, they are to be aligned on the same side with the complainants.” Judge Sanford, who tried the case below, did use that language at the page cited in the Brief, but in doing so he was manifestly considering the allegations of the bill only, and only one aspect of the case. For on the next page of his very short opinion, he said:

“As the complainants by setting down the plea for argument have admitted, for present purposes, the broad averments of the plea that these trustees are improperly and collusively joined as defendants for the purpose of creating a case cognizable in this Court and that when the parties are properly aligned according to interest the defendant trustees will be found on the same side of the controversy with the

complainants, it follows that under such admission the plea in abatement must be held sufficient in law for that reason also." R. 139.

Aside from the plea, which as before seen must be conclusive of the case in favor of the appellees, they submit further that the bill shows upon its face that the defendants, Rhea, Gaut and Hardison, are indispensable parties to the suit, and that they are on the same side of the alleged controversy with the complainants. It alleges and shows that they are the holders of the legal title and are active trustees of the property in question. R. 1. It alleges that the faction to which the complainants belong, "is entitled to the exclusive use of said property," and "that the trustees, who are Isaac T. Rhea, John M. Gaut and W. T. Hardison, hold the legal title to said property in trust" for that faction alone; and it shows that ever since the division in the congregation the trustees have in fact held the property in subserviency to that faction and permitted it to have and enjoy the exclusive use and possession thereof, and that when the complainants requested the trustees to "institute legal proceedings for the purpose of protecting said property and the rights of the members" of the faction to which complainants belong, against the demand of the other faction, they "declined to do so," because they were "unable to maintain a suit in this Court." The trustees, as the bill alleges, made the same reply made by the elders of the faction of which complainants are members, and for the same reason. R. 14.

They did not say in reply to that demand that they were neutral in the matter, nor that they held the title and the property in trust for those whom the courts might say are, or had in effect already said were, the true beneficiaries.

As said by this Court in *Dawson vs. Columbia Trust Co.*, "No difference or collision of interest or action is alleged or even suggested." 197 U. S., 181.

On the contrary the allegations of the bill, as before seen, plainly show harmony of action and interest between the com-

plainants and the faction of which they are a part, and the trustees in respect of this property.

Antagonism between the trustees and the other defendants is distinctly disclosed in the bill. The trustees have permitted this property to be withheld from these other defendants and to be used for years exclusively by the faction opposing them, and now they submit without defense to the present bill, which seeks to protect and continue the latter faction in the exclusive use and enjoyment of the property, and to have the Court adjudge that the trustees shall continue to hold the property for the exclusive benefit of that faction. The attitude of the trustees toward that faction and in respect of this property is entirely satisfactory to the complainants, and the trustees are expressly excepted from the operation of the injunction prayed for against the other defendants, these appellees.

The cases relied on in the brief for appellants cannot avail them in the case now before the Court, we submit, because not in point. One controlling difference between *Watson vs. Jones*, 13 Wal., 679, and this case is, that the questions of improper and collusive joinder of parties named and of the want of the requisite diversity of citizenship, raised by the plea here and on which this case has been and must be decided, were not raised or decided there. In that case there were no averments and admissions, as here, that the defendant trustees were improperly and collusively joined for the purpose of creating a case cognizable in the Circuit Court, and that they were in interest on the same side of the controversy with the complainants. Besides, that case was decided before the Judiciary Act of 1875, now in force, and when the question of jurisdiction based on diversity of citizenship "could only be raised by a plea in abatement or by a demurrer," (*Nashua R. R. vs. Lowell R. R.*, 136 U. S., 373); and that question was not so raised and was not decided or even suggested in that case. Therefore the decision therein made can have no application in considering the plea filed and admitted in this case.

No more, we think, is the decision recently made in *Helm vs. Zarecor*, 32 Sup. Ct. R., 10, to be applied in this case. In that

case there was no plea that any one actually impleaded had been improperly and collusively joined as a defendant for the purpose of creating a case cognizable in the Circuit Court, or that any one named as a defendant was in interest on the same side of the controversy with the complainant. But the plea in that case averred only that certain persons, named in the plea as indispensable parties plaintiff and defendant, had been "omitted from the bill as parties for the collusive purpose of creating a case cognizable in this Court." That plea was overruled on the ground that the statute did not relate to the omission of parties. Of that ruling of the court below and his action on another plea this court said, "We need add nothing to what the court said below upon these points."

The court below went further in that case and on his own motion from the allegations of the bill aligned the defendant corporation with the complainants and thereupon dismissed the suit for want of the requisite diversity of citizenship. His action in that regard was reversed and the case remanded, nothing else being decided or considered.

Appellees respectfully ask that the judgment of the court below be affirmed and the suit dismissed.

FRANK SLEMONS,  
J. H. ZARECOR,  
W. B. LAMB,  
W. C. CALDWELL,  
Solicitors for Appellees.



Office Supreme Court, U. S.  
FILED.

FEB 16 1912

JAMES H. MCKENNEY,  
CLERK.

IN THE  
**Supreme Court of the United States**

C. R. SHARPE, ET AL.

*Appellants*

vs.

E. W. BONHAM, ET AL

*Appellees*

No. 396 October Term 1911

Appeal from the Circuit Court of the United States for the  
Middle District of Tennessee

SUGGESTION OF DIMINUTION AND MOTION TO  
PERFECT RECORD AND BRIEF IN SUP-  
PORT OF THE SAME

JOHN M. GAUT,

SOLICITOR FOR APPELLANTS.



C. R. SHARPE et al,	}	October Term, 1911, No. 396. No. 22321.
<i>Appellants,</i>		
vs.		
E. W. BONHAM et al,		
<i>Appellees,</i>		

# SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION TO PERFECT THE SAME.

Appellants suggest a diminution of the record in this cause, and state that the record is defective, in that there is not copied therein the signature of the trial Judge to his certificate wherein he certifies that the bill was dismissed solely for want of jurisdiction, said certificate being found on page 140 of the printed record and on page 166 of the typewritten record. Appellants herewith present a duly certified, complete copy of said certificate, the Judge's signature included, and now move the Court to order the complete copy to be substituted for the defective copy.

Should the Court be of opinion that the substitution of the complete copy for the defective copy is not the proper proceeding, then appellants move in the alternative that a certiorari issue ordering the Circuit Court to send up a complete and perfect copy of the record, including said omitted signature, or make any other order suited to the case.

In support of this motion the following affidavit is presented:

C. R. SHARPE ET AL.

VS.

E. W. BONHAM ET ALS.

In the Supreme Court of the  
United States.

Before me, John H. DeWitt, a Notary Public in and for the County of Davidson and State of Tennessee, this day personally appeared John M. Gaut, and in due form of law made oath that he is sole solicitor for appellants in the above entitled cause.

That he, within the last fifteen days and not before, discovered that in the printed record in the cause the signature of the trial Judge does not appear to his certificate wherein he certifies that the bill was dismissed solely for want of jurisdiction. (See Record, p. 140.) Affiant at once took the necessary steps to ascertain whether the same omission had been made from the original transcript, and was informed by the Clerk of this Court that it had been. (Tr., p. 166.) Affiant states that he knows, from personal examination, that the Judge's signature is duly subscribed to the original paper now on file in the Court below, and this fact appears from the certified copy herewith presented. Affiant at once took steps to have the omission supplied.

Affiant resides in the State of Tennessee, and did not know of the existence of Rule 14 of this Court, nor of said defect in the record, until within the last fifteen days.

He prays that the complete copy be substituted for the defective copy.

JOHN M. GAUT.

Sworn and subscribed to before me, at office in said county, on this, the first day of February, 1912.

My commission expires February 3, 1915.

JOHN H. DEWITT,

*Notary Public in and for Davidson County, State of Tennessee.*

### COMPLETE COPY SUBMITTED WITH THE MOTION.

C. R. SHARPE ET AL.

VS.

E. W. BONHAM ET AL.

No. 3588.

Equity, U. S. Circuit Court.

In this cause I hereby certify that the judgment of dismissal herein made is based solely on the ground that the record does not show that the controversy involved is one, in my opinion, between citizens of different States, but that it appears from the record that three of the defendants—to-wit: I. T. Rhea, John M. Gaut and W. T. Hardison, Trustees—are not antagonistic to the complainants, and that, therefore, they must be aligned upon the same side of the controversy with the complainants; and that, therefore, some of the defendants and some of the complainants are, in fact, citizens of the same State, and no other ground of jurisdiction appears from the record. The case is dismissed only for the reason above stated—

that is, that the controversy is not between citizens of different States, and consequently the Circuit Court of the United States has no jurisdiction.

This certificate is made conformable to the Act of Congress of March 3, 1891, Chapter 517, and the opinion filed herein is made part of the record, and will be certified to and sent up as a part of the proceedings, together with this certificate.

Dated this 14th day of April, A. D. 1910.

EDWARD T. SANFORD,  
*United States District Judge Holding the Circuit Court.*

I, H. M. Doak, Clerk of the District Court of the United States for the Middle District of Tennessee, having legal custody of the records of the Circuit Court and of the record in the above-styled cause, hereby certify that the foregoing is a true, perfect and complete copy of the certificate of Hon. Edward T. Sanford on file in said cause.

In witness whereof, I have hereunto signed my name and affixed the seal of the said District Court, at my office at Nashville, Tenn., this the 25th day of January, 1912.

(SEAL.)

H. M. DOAK, *Clerk.*

Waiving the suggestion of a diminution of the record and a certiorari, it is hereby agreed that the foregoing may be substituted for the certificate of the trial Judge as it appears on page 140 of the printed record in the above entitled cause in the Supreme Court of the United States, said cause being No. 22321 in said Court.

FRANK SLEMONS,  
*Solicitor for Bonham Et Al.*

## BRIEF ON MOTION TO PERFECT RECORD.

The decisions of this Court, it is insisted, sustain the appellants' right to a perfection of the record.

Stearns vs. U. S., 4 Wall., 1.

Clark vs. Hackett, 1 Black, 77.

Railroad vs. Schutte, 100 U. S., 644.

The Court, on its own motion, granted such relief in the cases of

Sweeney vs. Lorimer, 22 Wall., 208.

Morgan vs. Curtenius, 19 How., 8.

Really, however, we are confident that the record is sufficient as it stands. It has been repeatedly held that a formal certificate of the Judge in a case like this is not necessary if it clearly appeared from the record that the case was dismissed solely for the want of jurisdiction. It was held in *Excelsior, Etc., & Co. vs. Bridge Co.*, 185 U. S., 285, 46 L. Ed., 910, that a recital in an order allowing the appeal was sufficient.

In *Huntington vs. Laidley*, 176 U. S., 668, L. Ed., 44, 630, it was held that if it appeared by the decree appealed from and order granting the appeal, this was sufficient.

In *Smith vs. McKay*, 161 U. S., 354, 40 L. Ed., 730, it was held that the opinion of the Court alone was sufficient.



In *Interior, Etc., Co. vs. Gibney*, 160 U. S., 217, 40 L. Ed., 401, it was held that where the record showed that the only matter tried and decided was a demurrer to the plea to the jurisdiction, and the petition asks only for a review of the judgment of the Court, holding that it had no jurisdiction, this is sufficient.

So in *Shields vs. Coleman*, 157 U. S., 176, 39 L. Ed., 663, it was held that if the order granting the appeal states that it was granted solely upon the question of jurisdiction, this was sufficient.

Again, *in re Lehigh Min. & Mfg. Co.*, 156 U. S., 322, 39 L. Ed., 438, that if the judgment and bill of exceptions and order allowing the writ of error showed that the dismissal was for want of jurisdiction only, that was sufficient.

In this case the decrees dismissing the bill, found on page 139 and page 140, show that the case was heard and decided upon the motion of complainants to disallow defendants' "pleas" (there was but one) because insufficient in law; that the plea was held sufficient; that complainant declined "to plead further upon the question of jurisdiction of the Court, and they elect to stand on the insufficiency of the plea" (R., p. 139); that thereupon the Court, by decree of the 13th day of April, 1910, reciting this declination and election, "ordered, adjudged and decreed that the bill be dismissed for want of jurisdiction;" that complainants then prayed an appeal from "*the decree entered on the 13th day of April, 1910, . . . for the reasons specified in the assignments of error*" (R., p. 141), which assignments (R., p. 141) raise no ques-

tion but the jurisdictional question; and that the Judge wrote on the application for appeal that "The foregoing claim of appeal is allowed," and signed his name to it (R., p. 141), and, in addition, entered a formal decree allowing the appeal, fixing the bond, etc.; and, in addition to all of this, the opinion of the Judge, signed by him (R., p. 138), which, in his certificate "filed" in the cause (R., p. 140), he made part of the record, and directed to be certified to and sent up as part of the proceedings, shows clearly that he dismissed the bill solely because, in his opinion, the court had no jurisdiction.

Under the principles of the cases cited above, the record, it is believed, is sufficient; but, out of abundant caution, the application is made to supply the omitted signature to the certificate.

JOHN M. GAUT,  
*Solicitor for Appellants.*